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# INDIAN AND NON-NATIVE USE OF THE COWICHAN AND KOKSILAH RIVERS

## AN HISTORICAL PERSPECTIVE

by Brendan O'Donnell

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## INTRODUCTION

The following is one of a series of reports on the historical uses of waterways in New Brunswick and British Columbia. These reports are narrative outlines of how Indian and non-native populations have used these rivers, with emphasis on navigability, tidal influence, riparian interests, settlement patterns, commercial use and fishing rights.

These historical reports were requested by the Interdepartmental Reserve Boundary Review Committee, a body comprising representatives from Indian Affairs and Northern Development [DIAND], Justice, Energy, Mines and Resources [EMR], and chaired by Fisheries and Oceans. The committee is tasked with establishing a government position on reserve boundaries that can assist in determining the area of application of Indian Band fishing by-laws.

Although each report in this series is as different as the waterway it describes, there is a common structural approach to each paper. Each report describes the establishment of Indian reserves along the river; what Licences of Occupation were issued; what instructions were given to surveyors laying out these reserves; how each surveyor laid out each reserve based on his field notes and survey plan; what, if any, fishing rights were considered for the Indian Bands; and how the Indian and non-native populations have used the waterway over the past centuries for both commercial and recreational use.

Primary sources for this information are found in the National Archives of Canada, the Provincial Archives of New Brunswick, the Harriet Irving Library of the University of New Brunswick, the British Columbia Provincial Archives, the Hudson's Bay Company Archives, the Indian Land Registry at DIAND, and in the Legal Surveys Division of EMR. Secondary sources are found in the National Library of Canada, DFO's departmental library, DIAND's departmental library, or are brought in from other libraries throughout Canada on inter-library loan.

Each report in the series is being distributed to the Reserve Boundary Review Committee members. It is hoped each will make this research available to other members of their department by depositing the reports in their departmental library.

Indian and Non-Native Use of Cowichan and Koksilah Rivers  
An Historical Perspective

By Brendan O'Donnell

Cowichan River, on the eastern side of Vancouver Island, British Columbia, originates in Cowichan Lake and flows easterly for approximately thirty-five miles to the sea in Cowichan Bay, near the City of Duncan. About half-way between the river's mouth and Cowichan Lake is a minor obstruction known as Skutz Falls, with a height of eight to ten feet. About four miles below Skutz Falls is another minor obstruction known as Marie Canyon. Cowichan Lake covers an area of twenty-four square miles and is said to be over 600 feet deep in some spots.

As is characteristic of waterways on the east cost of Vancouver Island, summer runoff on Cowichan River is low due to drought. However, the autumn rains are accompanied by a tremendous increase in the runoff and the river is fairly swift throughout its entire length. In January and February the precipitation becomes partly bound in the form of snow and the runoff decreases. It increases again during the spring melt down and rains.<sup>1</sup>

The Koksilah River is a tributary of Cowichan River and combines with the latter in a multi-channeled delta at tide level. The Koksilah is approximately twenty-six miles in length. This river is reported to have a much poorer flow factor than the Cowichan

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<sup>1</sup> C. Mc C. Mottley and G.C. Carl, "The Cowichan River Investigation." circa 1935. Copy on file at the National Archives of Canada, RG 23, Volume 1501, File 769-11-16 (1). See also Dominion Water Power Branch, Department of the Interior, "Power Rivers of British Columbia." Copy on file at the National Archives of Canada, RG 89, Volume 530, File 15.

as it does not drain any lakes, and the watershed has been logged off extensively. Flash runoffs cause the river to rise and fall rapidly.<sup>2</sup> The river has one natural obstruction known as Marbel Falls, located some nine miles above the confluence with the Cowichan.

The Cowichan Indians, members of the Coast Salish cultural grouping, were the first inhabitants of this district. They called themselves Kawutson, which refers to a certain rock on a mountain at the entrance to Cowichan River.<sup>3</sup> This once-numerous<sup>4</sup> and powerful tribe formerly controlled, through a confederation with other Salish tribes, a territory that included the valley of the Fraser River from its mouth nearly to Spuzzum, the Gulf Islands, and much of southern Vancouver Island.<sup>5</sup> The Cowichans of Vancouver Island are divided into numerous sub-bands, seven of whom live near the mouths of the Cowichan and Koksilah Rivers. These seven sub-bands, which live within the present Cowichan Indian Reserve No. 1, are: Quamichan, Comeakin, Somenos, Clemclemaluts, Kilpaulis, Khenipsen, and Koksilah.<sup>6</sup>

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<sup>2</sup> F.W. Rudge, "Report on Koksilah River." 7 December 1948. Copy on file at the National Archives of Canada, RG 23, Volume 840, File 719-9-78 (1).

<sup>3</sup> Barbara A. Leitch, A Concise Dictionary of Indian Tribes of North America. Algonac, Michigan: Reference Publications Inc., 1979, p. 132.

<sup>4</sup> There were approximately 5,500 Cowichan Indians on Vancouver Island in 1780. Today there are approximately 2000.

<sup>5</sup> G.P.V. Akrigg and Helen B. Akrigg, 1001 British Columbia Place Names. Vancouver: Discovery Press, 1973, p. 46.

<sup>6</sup> There are eight other Cowichan sub-bands on the southeast coast of Vancouver Island.

There are several legends of how these Indians came to inhabit the Cowichan Valley, the most common being the story of the marriage of the first man on earth and two Sooke women, from whom all Cowichan Indians descend.<sup>7</sup> Another legend tells of how the Cowichan Indians discovered salmon, which they called Stkaukee. The legend continues that the Indians decided the best way of catching salmon was by trapping them in a weir.<sup>8</sup>

It is uncertain who the first white people to enter the Cowichan-Koksilah area were or when they arrived. It is believed by some that the Cowichans may have been visited by Juan de Fuca in 1592, and it is almost certain they met later expeditions to the northwest coast by Spaniards, British and Americans.<sup>9</sup> Early in the nineteenth century, Hudson's Bay Company traders were in contact with the Cowichans and this contact was sustained with the establishment of Fort Victoria in 1843.

The first recorded visit of a whiteman to the district was that of Rev. Father Lemprit [or Lemfrit], a missionary who appeared at the mouth of the Cowichan River in 1850. He and other missionaries returned to the Cowichan throughout the decade to baptize the Indians.<sup>10</sup> However, John Humphreys [or Humphrey], a trader and former employee of the Hudson's Bay Company, claimed

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<sup>7</sup> Martha D. Harris, trans., History and Folklore of the Cowichan Indians. Victoria: The Colonist Printing and Publishing Company, 1901.

<sup>8</sup> E. Blanche Norcross, The Warm Land. A History of Cowichan. Duncan, B.C.: Island Books, 1975, p. 3.

<sup>9</sup> John R. Swanton, The Indian Tribes of North America. Washington, D.C.: Smithsonian Institution Press, 1979, p. 553-554.

<sup>10</sup> Kenneth Duncan, "History of Cowichan." [Source unknown]. Copy on file at the Provincial Archives of British Columbia. See also R.I. Dougan, Cowichan, My Valley. Cobble Hill, B.C.: 1973, p. 118.

to have settled in the district in 1846, although his contemporaries later maintained he didn't arrive until 1856.<sup>11</sup>

As stated, the Hudson's Bay Company had been trading on Vancouver Island since the early part of the nineteenth century, and in 1849 the Island was ceded to the company by Royal Proclamation. As part of this arrangement the Hudson's Bay Company was officially charged with colonizing the Island and, unofficially, with establishing an Indian policy for the Imperial Government. These two tasks fell to James Douglas, Chief Factor at Fort Victoria and also , after September 1851, Governor of Vancouver Island. To fulfill both these objectives, Douglas negotiated "purchases" or "deeds of conveyance" with fourteen Indian Bands on Vancouver Island between 1850 and 1852.<sup>12</sup> One historian has written that:<sup>13</sup>

As chief factor of the Hudson's Bay Company at Fort Victoria (1849-1858) and as governor of Vancouver Island (1851-1864), James Douglas negotiated a series of "treaties" by which the Indians of southeastern Vancouver Island surrendered their land "entirely and forever" in return for a few blankets and certain reserve lands. At the same time, they retained their hunting and fishing rights on unoccupied lands...

The total area ceded, about one-fortieth of Vancouver Island, extended from Victoria to a few miles beyond Sooke Harbour and from Victoria to North Saanich, as well as the lands around Nanaimo.

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<sup>11</sup> R.I. Dougan, p. 118.

<sup>12</sup> Edited versions of these "deeds" can be found in: British Columbia, Papers Connected with the Indian Land Question. 1850-1875. Victoria: Richard Wolfenden, 1875, p. 5-11.

<sup>13</sup> Dennis Madill, British Columbia Indian Treaties in Historical Perspective. Ottawa: Research Branch, Corporate Policy, Indian and Northern Affairs Canada, 1981, p. 9.

Although these surrenders involved Bands around the Cowichan-Koksilah Rivers area, they did not include the Cowichan Valley Indians. This was not because the Cowichans did not wish to enter into an arrangement with the Hudson's Bay Company; rather, Douglas refused their offer of surrender because he did not believe enough whites were ready to settle in the Cowichan Valley at that time. As one commentator later remarked, after reading Douglas' correspondence to his superiors:<sup>14</sup>

The Cowichan and other Indian tribes were also anxious to sell their lands, but Douglas declined their proposals because just then he was not prepared to enter into possession of any more land. He remarks wisely that possession ought to be taken immediately after the purchase, as the arrangements may be "forgotten and further compensation claimed by the natives."

Although Douglas refused to accept the Cowichan Indians' offer of surrender of their land in 1850, government-sanctioned explorations of the Cowichan Valley soon began. In 1851, Joseph Despard Pemberton, the first Surveyor-General of the Crown colony of Vancouver Island, visited Cowichan Bay and later submitted an "eye sketch" of Cowichan harbour to Governor Douglas. The Governor himself travelled up the valley in 1856, having gone to the Cowichan to apprehend an Indian for attempting to kill a white man. Douglas was impressed with this territory and was now willing to accept a surrender, but the Indians were becoming more aware of the value of their land. As one historian has commented:<sup>15</sup>

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<sup>14</sup> Walter N. Sage, Sir James Douglas and British Columbia. Toronto: University of Toronto Press, 1930, p. 160-161.

<sup>15</sup> Robin Fisher, Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890. Vancouver: University British Columbia Press, 1977, p. 152.

In 1850 the Cowichan had offered to sell their land and Douglas had turned them down, but now [in 1856] the Indians were divided over the question of selling. One party was in favour of a sale while another, including mostly young men, was opposed. Douglas anticipated trouble in "adjusting" these differences between the Indians...

However, during this visit, Douglas supposedly indicated to the Indians in a general way what lands would be considered theirs.<sup>16</sup> Surveyor General Pemberton returned to the Cowichan in 1857, instructed by Governor Douglas to cross Vancouver Island from Cowichan harbour to Nitinat, making a rough survey and submitting a report on natural resources, the nature of the terrain, the natives, and areas suitable for settlement. His party consisted of nine men; they left Cowichan harbour on 4 September 1857 and reached Nitinat on the west coast of Vancouver Island on 19 September 1857.

Pemberton's expedition got off to an inauspicious beginning when his survey instruments became badly damaged. As a result Pemberton was able to supply Douglas with only a compass-sketches map. His report reads in part:<sup>17</sup>

After passing the Somenos plains the Cowichan River becomes more rapid, and the country covered by pines of different kinds; between the Somenos plains and the large lake [Cowichan Lake], several tracts of country eligible for settlement will be found, but they will require to be cleared. The situations alluded to will have all the advantages of a fertile soil, good water, game and fish, variety of timber, the appearance of the surrounding country being generally pretty and cheerful, often grand. The same remark will apply to the land in many places bordering upon the large lake.

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<sup>16</sup> Kenneth Duncan, p. 2.

<sup>17</sup> Copied from John F.T. Saywell, KAATZA: The Chronicles of Cowichan Lake. [Cowichan Lake]: The Cowichan Lake District Centennial Committee, 1967, p. 2-3.



In the valleys Douglas pines twenty-three feet to twenty-eight feet in circumference are not uncommon. Indians occasionally hunt and fish on the border of the large lake and the stumps of huge cedars cut down at its Western extremity show that they once manufactured their largest canoes there.

He reported no Indians encountered between Somenos Village and the "South River", probably his name for the Nitinat.

Two years later, Oliver Wells, in the employ of the Surveyor General, surveyed and delineated the land districts [townships] of Shawnigan, Cowichan, Comiaken, Quamicham and Somenos in the Cowichan Valley. A general summary report which he addressed to Pemberton, and which was later published by the [British] Government Emigration Board, states that:<sup>18</sup>

The valley may be fairly considered as about 15 miles wide upon the sea coast, but narrows rapidly as we ascend the river, in so much that upon the westerly limit of the survey (11 miles from the coast) it has only a width of about six miles. It is well watered by the Cowichan River and its numerous tributaries.

The report continues with a description of the soil, its potential for growing crops, the various edible wild plants, a description of the fish and wild game, and the mineral wealth found in the valley. The report concludes by stating:

The whole area of the tract surveyed is 57,658 acres, of which about 45,000 acres of plain and prairie lands may be set down as superior agricultural districts, the remaining 12,600 acres being either open or thickly wooded land, partly arable; will likewise ultimately be chiefly occupied. There is thence a sufficient extent

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<sup>18</sup> Survey of the Districts of Nanaimo and Cowichan Valley.  
London: Groombridge and Sons, 1859, p. 10-14. Copy on file at the National Archives of Canada, RG10, Volume 3609, File 3316-1. Another version of this paper, titled "General Report on the Cowichan Valley," is on file at the National Library of Canada.

of good land laid out in this valley to provide farms for a population of from 500 to 600 families, at an average of about 100 acres each.

Along the rivers there are nine Indian villages, as follows: - three Clemclemaluts, two Comiaken, one Taitka, one Quamicham, one Somenos, and one Kokesailah. The number of families, after careful investigation, has been set down at 250, and the whole population at about 1,000 to 1,100 souls. The Indians have shown throughout a perfectly friendly disposition, and a strong desire to see the white men settle among them. Their services may prove of utility to the early settler by way of cheap labour.

In an introduction to the Government Emigration Board booklet by its Secretary, S. Walcott, it is noted that Pemberton disagreed with Wells' estimation of the number of Indians living in the Cowichan Valley. Walcott wrote that Pemberton "considered the number of Indians to be under-estimated at 1,100 souls, as large bodies were absent at the herring fisheries when Mr. Wells made his report."

Oliver Wells' field books of his April and May 1859 survey of the Cowichan Valley describe the land which he traversed. He sub-divided the districts into sections 3,300 feet by 1,320 feet.<sup>19</sup>

There are several references to Indians in the field books, such as the one which appears under Saturday, 30 April 1859: "Visited by a body of 19 Comiaken and Clemclemaluts Indians to discuss land affairs. Remained at the camp all day."<sup>20</sup>

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<sup>19</sup> Surveyor General R. Thistlethwaite to W.C. Bethune, Acting Superintendent, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration. 8 February 1956. Copy on file at PARC, RG10, File 974/30-3-1, Volume 2.

<sup>20</sup> Copies of the field books, listed as F.B. 12/59, are on file at the Surveyor General Branch, Ministry of Forests and Lands, Victoria. A copy of part of Wells' survey notes is on file at Surveys and Mapping Branch, Department of Energy, Mines and Resources, Ottawa; Field Book BC 56/A.

Wells supposedly laid out the Indian reserves of the Cowichan Indians. However, it was later charged that "Mr. Wells was afraid of the Indians and was much of his time in his tent, trusting largely to subordinates for information, and his survey proved to be very incorrect."<sup>21</sup> As will be discussed below, Wells' survey was eventually discarded.

Although individual whites were by now living in the Cowichan Valley, such as John Humphreys who, under the terms of his contract with the Hudson's Bay Company, received a tract of land which he chose to take up near Lake Quamichan, it wasn't until 1859 that a large tract of land was presumably pre-empted by whites. The first public indication of this pre-emption came in a newspaper article in Victoria's The British Colonist of Monday, 11 July 1859, under the headline "Cowichan Land Sold":

From the following statement, laid before the Assembly by Mr. Pemberton on Friday, it appears that the first, out of four instalments, has been paid by nineteen purchasers, on 9880 acres in Cowichan. This includes a large portion of the valley. It will be observed that several absentees are holders. The order in which the dates are given, would incline to the opinion that the books were not kept systematically...

The article then lists the nineteen individuals or companies who made this initial down-payment on the land. According to the newspaper, a total of £ 2,470 was paid by the group between 15 September 1858 and 4 November 1858.

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<sup>21</sup> G.M. Sproat, "Memorandum on Cowichan Reserve," circa February 1878. Copy on file at the National Archives of Canada, RG10, Volume 1273, pages 375-407. Microfilm C-13900. See also RG10, Volume 3662, File 9756 (1). Microfilm C-10116.

On the same page of the newspaper that the above article appears is another story which states that a "land meeting" had been held on Saturday, 9 July 1859, of "a considerable number of persons, chiefly Canadians, who are desirous of settling in Cowitchan [sic] Valley." This group apparently sent a petition to Governor Douglas signed "by upwards of twenty-five" people.

It is uncertain how many of those who made the initial pre-emption instalment or of those who signed the "land meeting" petition actually moved to the Cowichan district. Meanwhile, however, white explorers were still assessing the Cowichan district and reporting back to Governor Douglas. One of these was Samuel Harris, who in 1860 paddled from Cowichan Bay to Cowichan Lake in a large seagoing canoe. The trip took eight days. His object was to prospect for quartz lode reported by the local Indians to exist in the mountains. Harris concluded in a report to Governor Douglas that the route should offer no difficulty to miners and the financial rewards would be worthwhile.<sup>22</sup>

As a result of these numerous favourable reports and the growing desire by whites to move into the Cowichan district, the government sanctioned an organized movement of settlers into the area. With Governor Douglas, Surveyor General Pemberton, and the colony's Attorney General on board, a ship load of farmers landed in Cowichan Bay in August 1862. Apparently they were met by white people already settled in the district. A newspaper article in Victoria's The Daily British Colonist of Friday, 22 August 1862, under the headline "The Cowichan Expedition", summarized the landing of 100 farmers and the reaction of the local Indians:

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<sup>22</sup> E. Blanche Norcross, p. 12.

H.M. ship Hecate, having on board His Excellency the Governor, returned to Esquimalt yesterday morning from Cowichan District, whither she departed on Monday last with 100 intending farmers. The expedition reached Cowichan at 4 o'clock, p.m., on Monday, and the settlers, divided into three parties, under the guidance of the Surveyor General and his assistant, and the Attorney General, were landed at the localities in which it is intended they shall inspect and select land for farming purposes. The Governor also disembarked and encamped, and the party were regaled with fresh butter, milk, eggs and other home-raised luxuries by one of the Cowichan farmers.

The few natives at present in the district (the major portion of the tribe being absent fishing) agreed without hesitation to the surrender of their lands to the Government, with the exception of their village sites and potato patches, being informed that when the absent members of the tribes had returned to their homes in the autumn, compensation for the lands taken up by the settlers would be made at the same rate as that previously established - amounting in the aggregate to the value of a pair of blankets to each Indian - the chiefs, of course, coming in for the lion's share of the potlach. The Indians, one and all, expressed themselves as perfectly content with the proposed arrangement, and even appeared anxious that settlers should come among them.

However, as will be explained below, it appears no compensation was ever paid the Cowichan Indians.

A final major exploration party, which ascended the Cowichan River to Cowichan Lake, took place in 1864 under the direction of Dr. Robert Brown. The Brown expedition left Victoria by boat on 7 June 1864 and arrived at Cowichan Bay that same day. On 9 June 1864 they left the Indian village of Comiaken and arrived at the "Great Cowichan Lake" on 15 June 1864. Of the river, Brown wrote:<sup>23</sup>

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<sup>23</sup> Quoted in John F.T. Saywell, p. 4-8.

The Cowichan River is about 40 miles in length, and is a most tortuous stream; a straight line from the mouth of the lake would not probably be more than 29 miles; it is exceedingly rapid, there being hardly any smooth water with the exception of short distances in the canyon, and about two miles at the height of the river before joining the lake. Its banks, some distance from the sea where the sea breezes do not affect them, covered with magnificent forests of the finest description of spars, and numerous natural knees, are found every where. Were the river cleared of obstructions and deepened in the shallowest parts, they might be floated down in 'cribs.' The Winter time would be the best for rafting when the water is high. The total fall may be 700 feet. There are few bars, the banks running perpendicularly and covered with trees to the water's edge. In many places the river divides into channels; its breadth varies from 40 to 20 feet. Below the falls [later referred to by Brown as "Squitz" but today referred to as Skutz] the river bed is composed of round well worn stones. The color of gold we found everywhere, and in one or two places from  $\frac{1}{2}$  cent to  $1\frac{1}{2}$  cents to the pan was reported to me, in other places sufficient pay dirt to last for a long period. I may call to the recollection of the committee that white men have since then been reported as making as much as \$5.00 per diem on this same river. Coal crops out in one place on the creek. The surrounding country is in most places flat, with here and there open tracts. The whole of the spar lands are excellent soil, and it would abundantly pay to clear them for the value of the timber alone. Deer abound all along the track and salmon ascend the River to the lakes.

Brown had engaged the services of a Cowichan chief named Kakalatza, who acted a guide for the exploration party. Kakalatza pointed out to Brown the Indian place-names along the river:

The Indians inhabiting [the Cowichan] banks are as follows:

1. Comiaken (the Indians by the sea).
2. Quamichan (the hump-backs from the nature of the country).
3. Samena (the 'upper river' Indians).

The latter tribe only frequent the upper waters of the river and one or two families hunt on the great lake in the Autumn. A trail is here and there found along the banks with occasional fishing lodges, and camping ground such as (above Samena), Tsaan (the 'torn-up place'); Saatlaan (the place of 'green leaves'); Klal-amath (two log houses); Qualis (the 'warm place', Latitude 48 degrees 45 min. 37 seconds north); Kuchsaess (the 'commencement of the rapids'); Quatchas (the canyon); Squitz (the 'end of the swift place'), a most picturesque series of rapids with Indian lodges of which we secured a sketch, and so on until we came to Swaen-kum, an island where the Indian deposits the poles by which he has hitherto propelled his canoe up the rapid stream for now we have come into Squakum, the still waters, the commencement of the lake, where the current is no longer perceptible...

As they were passing Skutz Falls, Kakalatza pointed out to Brown a former village of an Indian band known as the Masolemucks, probably a sub-tribe of the Nitinats. According to Brown, Kakalatza pointed out to him

... choked with nettles and hemlocks on the opposite bank of the river some old lodge frames, as the former village of the Masolemucks in the Halycon days of long ago, when they were prosperous and their people were many...

Relations between the Cowichan Indians and the newly-arrived white settlers were at times tense, although no physical confrontation between the two actually broke out.<sup>24</sup> However, the white settlers claimed they were being harassed by the Indians. They charged that the local natives were shooting their cattle and pigs when they found their white neighbours' animals trampling their potato patches. In July 1864, thirty-eight

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<sup>24</sup> Prior to the arrival of this large group of white settlers, there were a few confrontations in which whites were either killed or wounded. On two of these occasions, Governor Douglas and a contingent of Royal Marines sailed into Cowichan Bay on board a gunboat and captured the guilty party, who was subsequently hanged. This form of swift "frontier diplomacy" is believed the reason no altercations broke out with the newly-arrived settlers.

Cowichan settlers sent a petition to the governor requesting "that a gunboat be sent up and remain in the Cowichan Bay for a time owing to the excited feeling existing among the natives."<sup>25</sup>

The following spring, Rev. Alex C. Garrett, the Anglican Superintendent of Indian Missions for Vancouver Island, wrote the Acting Surveyor General, B.W. Pearse, concerning the uneasiness between the two groups. Explaining the Indians' perspective, he wrote:<sup>26</sup>

When the Settlement was first planted in Cowichan Valley in August 1862, certain definite promises were made to the Indians by Governor Douglas in person. He told them in the presence of the settlers that in the ensuing Autumn he would return to Cowichan, have a gathering of all their tribes and make them suitable presents. This promise was never fulfilled...

... The Indians do not understand the principle of expediency which led to the breach of promise already alluded to. However remote from the truth, the conviction in their minds is irresistible that there never was any intention to perform it.

The attacks on the cattle and pigs, Garrett explained, was a result of this frustration with the colonial government, as well as from the very real damage to the Indian crops done by these animals.

Garrett also pointed out to Pearse another potential problem that might develop for the government as a result of relations between the local whites and the Cowichan Indians:

There are about 1,000 Indians in the Valley distributed among five villages. They at present cultivate about fifty acres amongst them all...

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<sup>25</sup> Quoted in Kenneth Duncan, p. 4. See also E. Blance Norcross, P. 15.

<sup>26</sup> Quoted in E. Blanche Norcross, p. 15-16.



Private individuals unable to obtain any title from the Government to portions of these reserves, pursue the reckless policy of dealing with the natives themselves. This, fostering the idea of a right existing where the Government recognizes none, will give the Indians a conviction that there is some fabulous value in their land, and will render it altogether impossible for the Government to obtain a settlement with them on anything like reasonable terms. I allude especially to a case in which a contract has been entered into with a chief by which he is to be paid fifty dollars for allowing a white the privilege of cutting hay upon 4 certain specified portion of the reserve. Let this but become an established practise [sic] and the settlement of Indian titles will require more gold than the Crown lands Revenue will easily spare for the purpose.

In an attempt to further define the Indian lands in the Cowichan Valley, the Lands and Works Department ordered Surveyor General Pearse, in May 1867, to re-survey the Cowichan Indian Reserve. With the assistance of a man named Robertson, Pearse's survey party spent almost the whole month of May in the field. Pearse concluded, when he filed his field notes, that he "[f]ound the measurements nearly all wrong, in Wells' (original) survey..."<sup>27</sup>

In the 13 July 1867 edition of the British Columbia Government Gazette, the following official notification was published over B.W. Pearse's name:

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<sup>27</sup> A rough version of the field notes is on file at the Surveyor General Branch, Ministry of Forests and Lands, Victoria, under "I.R., V.I., 2; Cowichan Reserves; B.W. Pearse, May 1867." Another version is filed under "I.R., V.I., 2A; Re-survey Cowichan Indian Reserve; May 1867; B.W. Pearse."

**INDIAN RESERVE AT COWICHAN**  
**Lands and Works Office, Victoria, B.C.**  
**4th July, 1867**

The Governor desires it to be notified for the information of the Public, that the following Sections of Land only are reserved for the use of the Indians:

**COWICHAN DISTRICT**

Range I., Sections 11, 12, 13, 14, 15, 16, 17.  
Range II., Sections 12, 13, 14, 15, 16.  
Range III., Sections 14, 15, 16.

**QUAMICHAN DISTRICT**

Range V., Sections 15, 16.  
Range VI., Sections 15, 16.  
Range VII., Sections 10 N.E.. corner, 15 acres.  
Range VII., Sections 11 E. part, 30 acres.  
Range VII., Sections 10 N. half, 11, 13, 14, 15, 16, 17.

The mode of dealing with the remaining portions of the original Reserve will be publicly notified hereafter.

The Clem-clem-a-lats and Somenos District Reserves, other than those included in the above Schedule, remain as heretofore.

This notice ran in the weekly Gazette for ten consecutive weeks.

As the notice implies, Pearse had reduced the original reserve. In 1904, Surveyor Ashdown H. Green informed Indian Superintendent A.W. Vowell that the "reserve was reduced after the outbreak of smallpox in 1862-1863..."<sup>28</sup> Apparently a reduction in the Cowichan Indian population justified the 1867 reduction in the Cowichan Reserve. The reserve was now reported to contain 2705 acres.

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<sup>28</sup> Quoted in letter from Surveyor General F.H. Peters to D.J. Allan, Superintendent, Reserves and Trusts, Indian Affairs Branch, Department of Mines and Resources. 14 January 1947. Copy on file at PARC, RG10, File 974/30-3-1, Volume 1.

On 14 September 1867, the following public notice was published in the British Columbia Government Gazette over B.W. Pearse's name:

The following Sections of Land in the Cowichan and Quamichan Districts will be open for Preemption on the 1st of October next, under the "Vancouver Island Land Proclamation, 1862," viz:

**COWICHAN DISTRICT**

- W.  $\frac{1}{2}$  of Section 10, Range I, 50 acres.
- Section 11, Range I, 100 acres.
- W. part of Section 11, Range II, 70 acres.

**QUAMICHAN DISTRICT**

- S.  $\frac{1}{2}$  of Section 10, Range VIII, 50 acres
- W. part of Section 10, Range VII, 85 acres
- W. part of Section 11, Range VII, 70 acres.
- Section 13, Range VII, 100 acres
- Section 14, Range VII, 100 acres

One assumes that at least some of this land was part of the original Cowichan Reserve.

According to one commentator, among the discrepancies Pearse found in the 1859 Wells survey was one along the south boundary of Section 17, Ranges V, VI, VII and VIII, Quamichan District, which was shown four chains north of its proper position.<sup>29</sup> When white settlers moved their fences to Pearse's line, the Indians objected on the ground that their lands were being encroached upon.

Another area of dispute between the Cowichan Indians and local whites was over Range VII, Section 14, Quamichan District, listed for pre-emption by Pearse in the B.C. Government Gazette on 14 September 1867. This land was pre-empted by A.W. Rogers.

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<sup>29</sup> Kenneth Duncan, p. 5.

However, the Governor of the Colony of British Columbia decided to return this land to the Cowichan Indians. In a letter to a Mr. Morley, who was an agent of the colonial government in the Cowichan District, dated 4 May 1869, the Chief Commissioner of Lands and Works, John Trutch, wrote:<sup>30</sup>

In reference to the dispute between Mr. Rogers and the Cowichan Indians as to the section of land (Section 14, Range 7) Quamichan District, reported in your letter to me dated April 27th, I have the honour to inform you that this matter had already, before your report was received, been brought under the consideration of His Excellency the Governor on the complaint of the chiefs of the tribes residing on the Cowichan Reserves, that the section of land above named having formerly been part of the land reserved for their use, had been cut off by Mr. Pearse without their concurrence or knowledge.

His Excellency granted these chiefs an opportunity of stating their case at a personal interview with himself, from which statement, corroborated to some extent by the evidence of Mr. Robertson, who was one of Mr. Pearse's surveying party when the reserves were laid out in 1867, it appeared that there must have been a misunderstanding between Mr. Pearse and these Indians as to the exact limits of the lands to be held in reserve for them, and being willing to take a favourable view of the claim of the Indians to the land in dispute, His Excellency has directed me to hold the section of land in question under reserve for their use, and to notify Mr. Rogers that his Pre-emption Record of this land, having been made by me under the mistaken supposition that the said land was open for pre-emption, must be cancelled.

Under further directions from the Governor, I have instructed Mr. Mohun, Surveyor, to go up to Cowichan by to-morrow's boat, and under your general directions, and in company with you, to trace on the ground all the boundary lines of this reserve as indicated on the sketch map enclosed herewith. And I am to request that you will take such steps as you may deem advisable, to induce as many as possible of the Indians interested in

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<sup>30</sup> Quoted in: Papers Connected with the Indian Land Question. 1850-1875, p. 60-61. This book is sometimes referred to in historical documents as the "Yellow Book."

this reserve to go with you round those boundary lines, and that you will clearly point out the same to them, and give them distinctly to understand that no further alterations of these boundary lines will be made by Government, this being a final settlement of the same.

After Mr. Mohun's return to this office, maps of these reserves will be prepared from his notes and sketches; which maps will be sent to you to be handed to the chiefs of the various tribes resident on these reserves. And I have to request that you will inform the said chiefs, whilst you are pointing out on the ground the boundaries of these reserves, that such plans will be given to them by you; and, further, that the lands so reserved are to be held for the use and benefit of all the Indians residing thereon, and not as the special property of any particular chief or chiefs.

As to the land sold by Government to Mr. Munroe in 1859, viz: Sections 15 and 16, Range 7, Quamichan District, there can be no question but that these sections were never included in Mr. Pearse's survey, as part of the Indian Reserve, and the Indians must therefore be clearly informed by you that Government will not allow them to trespass on or prefer any claim to these sections, or to any other lands in the Cowichan Valley not included within the boundaries of their reserve as defined on the maps herewith transmitted to you.

I am further to inform you that His Excellency has been pleased to promise aid to the Indians in fencing in these reserves, to be supplied to them through you, in tools, nails, and other materials, in such amounts as you may deem proportionate to their requirements as the work of fencing progresses, to the extent in all of the value of \$200 during this summer, for which expenditure you will consider this your sufficient authority.

I have also to request that you will notify Mr. Rogers that the record in his name of Section 14, Range 7, has been cancelled, and that you will ascertain and report to me what amount (in money value) of labour, if any, has been expended by Mr. Rogers on the land pre-empted by him since the date of the pre-emption record of the same in his name, as Government are ready to refund to him any such outlay as he may prove to have been made by him whilst it is of course open to him to take up another pre-emption claim on any Crown Land not otherwise appropriated.

Surveyor Edward Mohun reported to Chief Commissioner Trutch on his survey of the Cowichan Indian Reserves on 21 May 1869:<sup>31</sup>

With respect to the difficulty with the Indians while surveying Section 12, Range VIII, Quamicham District, the appearance of Mr. Pemberton was quite sufficient to put an end to the opposition the Chief Te-cha-malt had offered at first.

I have accompanied Mr. Morley over the boundaries, and though we had great difficulty in inducing the Indians to go with us, they all say that they perfectly comprehend the limits of their reserves. In fact, notwithstanding the assertions of the Roman Catholic Priest during his interview with His Excellency the Governor to the contrary, I am persuaded that these boundaries have been well known to most of the Indians since Mr. Pearse's survey two years ago.

Mr. Botterell wishes to obtain a few acres intervening between his west boundary line (Section 13, Range III., Cowichan District), in exchange for a rocky point north of the river, at the north-east corner of this section, now occupied by Indian houses, in order that his cattle may be able to obtain fresh water, as the river is so brackish at its mouth that they will not make use of it.

Messrs. Marriner showed me the piece of land granted them by Governor Douglas, but I estimate it at four and a half acres instead of two. The Comiaken Chief, Low-ha, however expressed himself satisfied that they should retain it, as he said the Indians did not require it. I may add that these gentlemen have, at their own expense, erected a bridge across the Cowichan River at Range line II and III; and should you feel justified in confirming them in the possession of the land they now hold, I do not think there is any fear of its leading to complications with the Indians, and they are certainly deserving of encouragement.

With respect to Mr. Brennan's 20 acres, I was unable to find the posts. But as it was surveyed by Mr. Patterson and allowed as a Government survey, I wrote to him requesting he would show Mr. Morley and the Indians the boundaries.

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<sup>31</sup> Ibid., p. 61-62. A copy of Mohun's field book is on file at the Surveyor General Branch, Ministry of Forests and Lands, Victoria, under "I.R., V.I., 2; Cowichan Reserves."

With regard to Sections 15 and 16, Range VII, Quamichan District, the Indians have fenced it to a very considerable extent; and in consequence of Mr. Pemberton having promised them Government assistance in removing the rails from Section 12, Range VIII, they afterwards came to me and asked if the Government would also haul the rails from those sections. I told them the Government would not, as they had fenced it in spite of repeated warnings from Mr. Lomas and others, well knowing they were trespassing, and only depending on the inaction of the owner, Mr. Munroe.

In 1871, B.W. Pearse, who was now Chief Commissioner of Lands and Works, sent the Colonial Secretary a "Schedule of all Indian Reserves (surveyed) in the Province of British Columbia." For the Cowichan Indians the schedule indicated the following lands reserved for them:<sup>32</sup>

Locality and short description of Reserve	Range	Section	Tribe to which Natives belong
Cowichan District .....	I.	11 to 17 inclusive	Quamichan
Do. ....	II.	12 to 16 inclusive	Clemclemaluts ...
Do. ....	III.	14, 15, & 16, excluding 20 ac. P. Brennan .....	Comiaken & Kamutzen.
Quamichan District .....	V.	15 & 16	Samenos
Do. ....	VI.	15 & 16	Samenos
Do. ....	VII.	N.E. portion of 10, E. portion of 11, & sec. 14	Quamichan (part of).
Do. ....	VIII.	N. ½ Sec. 10, 11 & 13 to 17 inclusive .....	Kokesailab

According to this schedule, the total acreage of the Cowichan Reserve was 2,675 acres.

<sup>32</sup> Ibid., p. 104.

In September 1874, Edward Mohun surveyed in detail the Cowichan Reserve.<sup>33</sup> Unfortunately, no correspondence could be found in the National Archives of Canada concerning this survey.

Conflict between white settlers and native bands over land was not restricted to the Cowichan Valley. As settlers began occupying territory throughout British Columbia, native groups began their agitation for an equitable solution to their land claims. In 1876, the federal and provincial governments established a three-man Indian Reserve Commission to resolve what was then called "The Indian Land Question."<sup>34</sup> Alexander C. Anderson was the Dominion Commissioner, Archibald McKinlay was the Provincial Commissioner, and Gilbert M. Sproat was appointed Joint Commissioner, representing both levels of government. On 3 November 1876, the three Commissioners, along with Edward Mohun, surveyor, and George Blenkinsop, census-taker and general assistant, left Victoria on their first excursion to visit Indian settlements and establish the boundaries of reserves.

This entourage eventually arrived in the Cowichan Valley on 19 January 1877. They remained in the district for almost a month, interviewing Indians and white settlers, trying to resolve land conflicts between the two groups, and officially

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<sup>33</sup> Copies of Mohun's Field Books of this survey are on file at Surveys and Mapping Branch, Department of Energy, Mines and Resources, Ottawa; Field Books BC: 49A, BC76A, and BC 233. Field Book 49A contains a map showing the main channels of the Cowichan and Koksilah Rivers and the myriad of sloughs that each has as it enters Cowichan Bay. See also maps TBC 240 and TBC 43.

<sup>34</sup> The terms of agreement establishing this Indian Reserve Commission are found in federal Order in Council P.C. 1088 of 10 November 1875 and provincial Order in Council of 6 January 1876. A copy of the former is on file at the National Archives of Canada, RG 2/1, 10 November 1875. A copy of the latter is printed in Papers connected with the Indian Land Question. 1850-1875, pages 169-170.



establishing Indian reserves along the length of the Cowichan River. On 12 March 1877, the three Commissioners signed a "Report of the Proceedings of the Joint Commission for the settlement of the Indian Reserves in the Province of British Columbia, respectfully submitted for the information of the Honourable the Minister of the Interior", which dealt, in part, with their visit to the Cowichan Valley.<sup>35</sup> This section reads:

Leaving Chemainis at 1 p.m. of the 19th January [1877] we reached Harris' Landing, Cowitchan Bay, by dusk, and slept at the tavern there. The following day, aided by canoes, dispatched with their crews by the Chiefs, we transported the baggage to the vicinity of the Quâmuchan Village, and pitched camp on a pretty spot on the left bank of the Cowitchan River. From this date up to the 17<sup>th</sup> of February our time was occupied first in hearing the statements of the Chiefs of the different villages in the neighbourhood, and then in examining the Reserves and the country around. During this period we made a three days' excursion up the river, to a point called "Ts-â-â-tham," where there is a fishing station, which, with several others higher up, we secured to the occupants.

Near the Comiaken Village, at the mouth of the river, we found that the fencing of Mr. Nelson, who had recently purchased a plot of land formerly belonging to one Brennan, intruded to the extent of several square acres of grass land on the Indian Reserve adjacent. We notified Mr. Nelson of the fact, and he at once expressed his willingness to remove his fencing to the proper boundary. This was accordingly done within the next two days, the Indians cheerfully assisting.

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<sup>35</sup> A copy of the report is on file at the National Archives of Canada, RG 10, Volume 3645, File 7936. Microfilm C-10113. Another copy is in RG 10, Volume 1273. Microfilm C-13900. The report was also printed in: Canada, Sessional Papers (No. 10), 1878, p. li-lxiii.

A separate report to the Minister of the Interior was made by Gilbert Sproat, dated 29 March 1877. A copy of this report is also on file at the National Archives of Canada, RG 10, Volume 3611, File 3756-11. Microfilm C-10106.

The question of the Cowitchan Lands we found to be complicated and very difficult of settlement; and with reference to them we here transcribe directly from the Journal of the Commission<sup>36</sup> the remarks made at the time.

"It is to be premised that, with reference to the natives of the Cowitchan Valley, comprising in all some 800 or 900 souls, a strange system of mismanagement has from the first existed. The Reserves originally assigned to them by ex-Governor Douglas have been from time to time cut down by successive Governors (especially, it would appear, by the late Governor Seymour) in such-wise that great dissatisfaction had arisen and all confidence in the sincerity of the Government seemed to have been destroyed. A strong party among the Indians, we had reason privately to know, were leagued together with the view of urging the Commissioners to restore to them the lands that had been alienated. But in anticipation of their argument the Dominion Commission, in accordance with the tenor of his instructions, informed the Indians at the outset that, while the Dominion Government in unison with the Provincial Government, were solicitous to promote the interest of the Indians, and to satisfy them in every reasonable way, no interference with the vested interests of the White settlers could be permitted. These having purchased their land in good faith, having made their improvements, and whose money had gone, with other moneys, to make the roads and build the bridges, by which the whole community was benefitted, and the value of all the adjacent land, whether held by Whites or Indians enormously enhanced."

The suggestion of the question under this point of view seemed to strike the mind of the natives here, as it had already done elsewhere, with great cogency.

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<sup>36</sup> Unfortunately, no copy of this "Journal of Commission" or diary could be found in Ottawa during this present search of documents.

The report then goes on to explain two particular land conflicts between the Cowichan Indians and white settlers. One dealt with the case of a Mr. Munroe, whose 200 acre-tract, allotted by the colonial government in 1859, cut into a portion of the reserve. Munroe had earlier informed the government by correspondence that he was willing to dispose of this piece of land if he were adequately reimbursed.<sup>37</sup> The Indian Reserve Commission, however, learned that a group of Somenos Cowichans were squatting on this land, in defiance of the Department of Indian Affairs. The Commission refused to enter into negotiations with Munroe for fear that this action would appear to sanction the actions of the squatters and thus encourage similar acts of defiance by other Indian groups.

The second case dealt with a Mr. Dods, who acquired a section of land, half of which [50 acres] was adjacent to the Clemclemaluts Village. The Indians initially had indicated their desire for this adjoining half section. The Commission struck a deal with Dods to pay him \$300 for the half section, allowing him to keep his barn-site and a right of way. When informed of the deal, the Indians then demanded not only the half section adjacent to their village but also the other half section on which Dods had his home. When the Commission refused this latter Indian demand, the Clemclemaluts Cowichans refused to accept the partial deal.

The report continues that:

On the 17th February [1877], the Chiefs of the Quamichan, Comi-aken, Somenos and Co-ke-silah villages met us at the camp, by appointment, attended by a number of their followers.

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<sup>37</sup> Correspondence dealing with this issue is on file at the National Archives of Canada, RG 10, Volume 3650, File 8489, Part 2. Microfilm C-10114.

The result of this our parting conference was, that we left these people, we believe, quite satisfied; the Chiefs, for themselves, and their people, assuring us that henceforth no question as to the tenure of the White settlers should be permitted to arise.

In order to secure this favourable result we had dealt liberally with the Indians, by assigning such unoccupied lands contiguous or adjacent to the Reserves as seemed desirable, in all, having increased the curtailed Reserves so as to make the area somewhat more than the original dimensions.

We, besides, gave a considerable area of good, though rocky, pasture land, along the Cowichan Bay, thus providing a valuable grazing ground for stock, available for the tribe generally.

About noon of the 17th February, after having taken leave of the Indians, we embarked in a large state canoe, provided by the Chief Low-ha for our accommodation; and, accompanied by several of the principal men, ran down the Cowichan River, and, crossing the Bay, reached our little steamer, on board of which our baggage had been previously deposited.

While in the Cowichan Valley, George Blenkinsop, who was acting as census-taker for the Indian Reserve Commission, estimated there were 831 members of the Cowichan Band living in the various villages that made up the reserve. His census was taken on 25 January 1877.<sup>38</sup> On the census forms, Blenkinsop made notational remarks concerning each village. Of Somenos Village, he wrote:

These people live on the left bank of the Cowichan River from 2 1/2 to 3 mi above the Quamichan Village. Here the navigation is interrupted by a jam which, report says, a few hundred dollars would set adrift. This would benefit the Indians.

A fishing station is about 12 miles above this jam and the Cowichan lake twenty.

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<sup>38</sup> A copy of Blenkinsop's census is on file at the National Archives of Canada, RG 10, Volume 3645, File 7936. Microfilm C-10113.

They are a dirty people. The overflowing of their main village once or twice a year renders them a great service.

The principal part of their soil is very inferior. They have a few good patches which the young men have taken in hand to farm.

Of the Quamichan Village, he wrote:

This, the principal village of the Cowichan tribe, is on the left bank of the Cowichan River about 2 miles from its mouth.

The upper part stands on risen ground, but the lower is built on the flat close to the river bank and is therefore subject to occasional overflows, when the natives have to provide themselves with lodgings elsewhere, generally in small cottages erected as reserves.

These cottages are for the most part adjoining their fenced lands on high grounds, and it seems to be the ambition of all the young men of the tribe to have their allotments surveyed in order that each one can have his small comfortable home.

In this neighbourhood of the Kinainichan village, at the back, there are some spots of good open lands; but little has been done towards improving it owing, they say, to the state of uncertainty regarding the disposition to be eventually made of it.

There are quite a number of energetic young men in this village, some of whom make good use of their land, whilst others for want of advice try to do much and fail.

They lose their stock not so much for want of fodder as good management.

Most of their houses were remarkably clean and had quite an appearance of comfort.

The women were mostly employed making mats, preparing wools and knitting or making blankets from the wool of the mountain goat which they sell to [?].

Of the Koksilah Village, Blenkinsop wrote:

This village is on the River of the same name about 2 miles above its junction with the Cowichan.

This small band are well disposed, thrifty, and energetic. They are striving here to make themselves good homes, and there is every appearance of their succeeding.

Each family has its little cottage, and have also fenced in a small patch of land with Barns and Sheds for their cattle.

They deserve encouragement.

Of the Comeakin Village, he wrote:

The Catholic Church stands on the hill at the back of the village and has an impressive appearance.

The Pastor is much respected and, in general, obeyed by his flock.

He strives hard to improve them, morally, and has to a great extent succeeded.

The enclosures of this branch of the Cowichan [River] have a farm like appearance when not overflowed, which they are at least twice a year.

They lose a number of cattle yearly from being [?] and want of fodder. They keep by far too many.

Lo'. â Kah [the Chief] is very friendly to the whites and keeps his people in order. One of them, who is a fair English scholar, keeps a store.

Of the Clemclemaluts Village, he wrote:

A dirty village, and a dirty people, living at the junction of the Cowichan and [Koksilah] Rivers.

They are by all accounts a troublesome race. Most of the young men, however, deserve some credit for the energy they have shown in battling with the obstacles they have met with on their low, flat, frequently flooded, reservation.

There are a few tidy Cottages. What they require is advice and encouragement. Here, as elsewhere, their spiritual advisors seem to take no pains in teaching them cleanliness.

Finally, of the Khenipsen Village, Blenkinsop wrote:

The Kanipsum village is situated at the mouth of the Cowichan River, north branch, perched on a rock and very dirty.

The Indians do but little in the way of farming, and rear but few Stock, having scarcely any land fit for either purpose. They bear anything but a good character.

No census seems to have been taken of the Kilpaulis Village by Blenkinsop.

On 17 February 1877, the day they left the Cowichan Valley, the Indian Reserve Commissioners passed the following Minute of Decision concerning the Cowichan Reserves:<sup>39</sup>

The original reserves consisting of the following sections are confirmed, viz.

Quamichan District

R.V, S. 15, 16.  
R.VI, S. 15, 16.  
R.VII, n.e. part of S. 10, e. part S. 11,  
S. 14.  
R.VIII, n. ½ S.10, S. 11, 13, 14, 15, 16, 17.

Cowichan District

R.I, S. 11, 12, 13, 14, 15, 16, 17.  
R.II, S. 12, 13, 14, 15, 16.  
R.III, S.7, 14, part of 15, part of 16.  
R.V, S.6.

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<sup>39</sup> A copy of the Minute of Decision is on file at the National Archives of Canada, RG 10, Volume 3612, File 3756-23. Microfilm C-10106.

In addition to the above the undermentioned lands are granted.

Quamichan District

R.II, S.12, 13, 14.  
R.III, S. 12, 13, 14, 15, 16.  
R.IV, S. 12, 13, 14, 15, 16.  
R.V, S. 12, 13, 14, e.  $\frac{1}{2}$  17, e.  $\frac{1}{2}$  18.  
R.VII, w. part S. 10, w. part S. 11.  
R.VIII, e.  $\frac{1}{2}$  S. 8, e.  $\frac{1}{2}$  S.9, s.e.  $\frac{1}{4}$  S. 10.

Cowichan District

R.IV, S. 15.  
R.V, e.  $\frac{1}{2}$  S. 11, e.  $\frac{1}{2}$  S. 12, e.  $\frac{1}{2}$  S. 13, S. 14,  
15.  
R.VI, S. 11, 12, 13, w.  $\frac{1}{2}$  14, w.  $\frac{1}{2}$  15.  
R.VII, S. 8, 9, 10, 11, 12, 13, 14, 15.  
R.VIII, S. 8, 9, 10, 15.

Also a graveyard to contain about half an acre near the s.w. corner of S. 16, R.VII, Quamichan District, and five fishing stations to contain not more than twenty acres each situated on the Cowichan River between Tsartlam and Scutze.

Only four reserves were eventually laid out between Tzartlamr and Skutz but one, Skutz No. 8, contained forty acres.

Of the above land allotted in this Minute of Decision, 5,889 acres was in Cowichan Indian Reserve No. 1. Another seventy-five acres in Range III, Section 7, Cowichan District, on the south shore of Cowichan Bay, is designated as Theik Indian Reserve No. 2. And fifty-one acres in Range V, Section 6, Cowichan District, also on the shore of Cowichan Bay, is designated as Kilpahlas Indian Reserve No. 3.

In a memorandum to B.C. Indian Superintendent Powell, dated 29 September 1880, the four fishing stations mentioned in the Minute of Decision were further described thus:<sup>40</sup>

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<sup>40</sup> A copy of the memorandum is on file at the National Archives of Canada, RG10, Volume 3612, File 3756-24. Microfilm C-10106. See also map BC 264, on file at Surveys and



Cowichan River

(Tazartlam)

A Reserve situate on the left bank of Cowichan River about one west from the west boundary line of Quamichan District bounded as follows: the courses being from the true meridian from a post on the left bank of Cowichan north 960 links, west 1500 links south 1652 links to the left bank of Cowichan River thence in an easterly direction following the river bank to the initial point.

[This reserve contained sixteen acres and is officially designated as Tzartlamr Indian Reserve No. 5].

Cowichan River

(Kakalatza)

A Reserve situate on the left bank of Cowichan River about  $1\frac{1}{2}$  miles west from the Tzartlam Reserve bounded as follows: the course being from the true meridian from a post on the bank of the Cowichan River north 1000 links west 1537 links south 2142 links to the left bank of Cowichan River thence in an easterly direction following the river bank to the initial point.

[This reserve contained twenty four acres and is officially designated as Kakalatza Indian Reserve No. 6].

Cowichan River

(Georges)

A Reserve situate on the left bank of Cowichan River about 3 miles west from "Kakalatza" Reserve bounded as follows: the courses being from the true meridian from a post on the left bank of Cowichan River north 1625 links thence west 1500 links thence south 1000 links to

the left bank of the Cowichan River thence is an easterly direction following the bank of the River to the initial point.

[This reserve contained eighteen acres and is officially designated as Skutz Indian Reserve No. 7].

#### Cowichan River

##### "Scutz"

A Reserve situate on the right and left banks of Cowichan River about 15 chains west from the "Georges" Reserve bounded as follows: the courses being from the true meridian from a post on the left bank of Cowichan river north 600 links thence east 2,000 links thence south crossing the river 2,000 links thence west 2,000 links thence north 1,400 crossing the river to the initial point.

[This reserve contained forty acres and is officially designated as Skutz Indian Reserve No. 8].

Three weeks after the Minute of Decision was passed, another Minute of Decision was approved concerning a reserve for the Cowichan Indians. On 3 March 1877, the Indian Reserve Commission designated seventy-five acres in Range V, Section 19, Shawinigan District, as a Cowichan Indian reserve. It is now officially designated as Est Patrolas Indian Reserve No. 4.<sup>41</sup> [Some historical documents refer to this reserve as Rogers Lake Reserve]. This reserve is not on the Cowichan River.

In 1906, one final reserve was allotted to the Cowichan Indians. On April 6 of that year, Indian Reserve Commissioner A.W. Vowell allotted 48.66 acres in the west half of Section 11, Range II, Cowichan District, near the confluence of the Korsilah and Cowichan Rivers. This reserve is known as Cowichan Indian Reserve No. 9.

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<sup>41</sup> See the 1877 Minute of Decisions for the Cowichan Reserves on file at the National Archives of Canada, RG10, Volume 3612, File 3756-23. Microfilm C-10106.

In 1878, most of the Cowichan reserves were laid out by Surveyor Ashdown H. Green, based on the Minutes of Decision of the Indian Reserve Commission. The exception was a large portion of Cowichan Indian Reserve No. 1 which had been surveyed several times over the years, the latest by Edward Mohun in 1874. This was explained by Surveyor Green in 1878 on the front page of one of his field books: "Some of the land [coloured] red [on the field book map] [and] given to the Indians was surveyed into sections long ago, [and] was not been gone over again - did not need surveying a second time."<sup>42</sup> When copies of these field books were being prepared for the provincial Lands and Works Department, B.C. Indian Superintendent I.W. Powell was told in a memorandum, dated 29 September 1880:<sup>43</sup>

In sending the tracings and duplicate field notes to the land office, attention might be drawn to the fact that the original reserve at Cowichan [Cowichan Indian Reserve No. 1] has not been resurveyed and therefore there are no field notes to send.

Green surveyed the following reserves in 1878: Theik No. 2, Kilpahlas No. 3, Est Patrolas No. 4, Tzartlamr No. 5, Kakalatza No. 6, Skutz No. 7 and Skutz No. 8. As well, he surveyed around the Koksilah Village on Cowichan Reserve No. 1. His field notes contain maps of each of these Indian Reserves, including Cowichan No. 1.

Despite the fact that the Indian Reserve Commissioners had reported in 1877 to the Minister of the Interior that they felt they had "left [the Cowichan] people ... quite satisfied" [see above, page 27], Joint Commissioner Gilbert Sproat later learned

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<sup>42</sup> Copy on file at the National Library of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

<sup>43</sup> Copy of the memorandum on file at the National Archives of Canada, RG 10, Volume 3612, File 3756-24. Microfilm C-10106.

that there was much Indian dissatisfaction over land matters. In fact, Sproat learned that many older Cowichan Indians had seriously considered murdering the Commissioners over their dissatisfaction.

In a twenty-page essay to the Superintendent General of Indian Affairs, dated February 1878 and titled "Memorandum on Cowichan Reserve",<sup>44</sup> Sproat detailed the history of government dealings with these Indians based on the few historical records that he could find and the Indians' testimony before the Indian Reserve Commission in 1877. Sproat wrote that there were five general complaints among the Cowichan Indians over land matters:

(No. 1) They complained that Governor Douglas had paid Indians both North and South of them for their lands, namely the Sooke, Esquimalt, Victoria, Saanich, Nanaimo, Fort Rupert Indians, but that the Cowichan Indians had not been paid.

(No. 2) They complained that the land which they were told was theirs did not include all the land previously pointed out to them on the spot by Governor Douglas.

(No. 3) They complained that from these lands, described as theirs, sections had been cut off, and that they had not been paid for these sections.

(No. 4) They complained that several Governors made promises to them and that for years these promises were not fulfilled, and then only by a small donation sent through Mr. Morley.

(No. 5) They complained that they have heard that white men had bought the fishing station on the lower Fraser River where they had always been accustomed to get their winter food.

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<sup>44</sup> A copy of this memorandum is on file at the National Archives of Canada, RG 10, Volume 3662, File 9756(1). Microfilm C-10116. Another copy is in RG10, Volume 1273, pages 375-407. Microfilm C-13900.

He told the Minister that:

It is generally believed to be a fact (Mr. Mohun who has special acquaintances with the Cowichan Reserve thinks it is) that though a reserve appears on the official map of 1859, the actual boundaries of the Cowichan Indian Reserve, were not shown completely to the Indians on the ground until 1867, at which time the reserve delineated on the map was cut down.

A perusal of the Land Office correspondence shows that from 1859 onwards, there was great confusion about the surveys at Cowichan. What with the 1859 survey of Mr. Wells which as above said was found afterwards from time to time to be extremely imperfect, and what with private surveys, and bit by bit surveys, made by Messrs. Tait and Attey, resident Land Recorders there; the Land Office authorities were in frequent difficulties. The Indians saw surveyor after surveyor pottering and altering lines, year after year and this probably helped to confuse their minds. As above said they were very anxious in 1861.

At 1867 when the alleged reserve was cut down, the Indians were shown most of the lies by Mr. Pearse, with whom was Mr. Mohun, but conversations with them were carried on in Chinook, which is a very untrustworthy medium for doing important business with the Indians. In fact, in 1869, the Governor (see page 61 Yellow Book on Indian Affairs) considered that there must have been, in one case at least, a misunderstanding between Mr. Pearse and the Indians, as to the exact limits of the reserve, and for this reason, a portion (Roger's piece) of the land cut off in 1867 was given back to the Indians.

The above exigencies of the Government as to land allotments in Cowichan seem to have arisen in the following way.

The place was favourably regarded as a rural district, and many persons in the Colony, and in San Francisco, and even in England, sent applications to the Government for land there, accompanied by deposits of money, which in the then state of the treasury was welcome, and once in hand, was not likely to be returned. It was found that the available land at Cowichan, outside of the requirements for Government and Indian Reserves, was insufficient for the acreage applied for, and the Government, therefore, was compelled to disappoint applicants and to request them to take their choice of certain portions, to the extent their deposits would pay for. The necessity of finding

these portions somewhere in Cowichan, possibly may explain the irregular shape of the Indian Reserve, which though delineated on the official map 1859 (but not very intelligibly) had not as above said, been shown to the Indians on the ground, and was not shown to them, as is alleged, until 1867, and then it appears, not very clearly.

Sproat never explained in this memorandum how, in 1877, he could have signed a report to the Minister of the Interior stating the Cowichan Indians were satisfied with their land holdings. His conclusion to this memorandum contradicts completely the earlier assertion. The conclusion reads:

These rough notes indicating at least lines of direction for more exhaustive inquiries, may aid you in framing a general opinion, how far the long continued dissatisfaction of the Cowichan Indians has arisen from barbaric restlessness on their part, or been caused by unavoidable circumstances or injudicious management on the part of the old Colonial Government.

In conclusion I may state that I have no information lately as to the state of feeling among the Cowichan Indians, but I am afraid it must be admitted that a conviction of the white chiefs unfaith is general among them. This conviction being ingrained and now partly inherited, cannot be removed very easily. When the Commissioners were there last year and stated to the Indians their inability to remove white men holding land by legal title, many of the older Indians as our interpreter discovered and as was stated by Mr. Humphreys to Mr. Fry and the Rev'd Mr. Holmes, proposed to kill the Commissioners and then attack the settlement, but the younger men were not disposed to adopt this method of adjustment.

As the 1870s came to a close, four inter-related issues came to dominate relations between the Cowichan Indians and the federal government: the clearing of obstructions on the Cowichan River, fishing on the Cowichan River, logging along the banks of the river, and land erosion caused by flooding and the logging industry. As early as 1864, Dr. Robert Brown had suggested that

obstructions be removed from the river to develop a logging industry [see above, page 12]. However, it appears that it wasn't until 1877 that concrete action was taken.

In that year, Parliament voted \$1500 to remove obstructions on the Cowichan, but in June 1877 the Minister of Public Works decided not to expend the money. His reasoning was that since the Cowichan was not a navigable river, it could not be dredged by the federal government. This fact was countered by the local Member of Parliament, F.G. Roscoe, who pointed out to the Minister that the Cowichan River was navigable for small craft and that the \$1500 appropriated would soon be recovered from the revenue made from the lumber industry. In February 1878, it was decided the federal government would expend the \$1500 on the Cowichan.<sup>45</sup>

Also in 1878, the logging and lumber industry began on the Cowichan River. In that year, William Archibald Robertson applied for a timber lease. He later wrote:<sup>46</sup>

All of which I succeeded doing and got a lease of 7,170 acres of the pick of the timber for 21 years at 1c an acre per annum, as I happened to be on friendly terms with the government. Timber lands at that time were very easy to be had.

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<sup>45</sup> See "Improvement of Navigable Rivers Province of British Columbia" in the Department of Public Works' "Subject Register"; copy on file at the National Archives of Canada, RG 11, Volume 695, Pages 1714-1716. Microfilm C-12815. See also related correspondence in RG11, B1(a), Volume 514, Subject 36. Microfilm T-1104.

<sup>46</sup> Quoted in John F.T. Saywell, KAATZA: The Chronicles of Cowichan Lake, p. 16

However, it was not Robertson but his partner, William Sutton, who eventually first logged the area and established the first commercial saw mill.<sup>47</sup>

On 22 April 1878, Gilbert Sproat, who was now the sole Indian Reserve Commissioner, wrote B.C. Indian Superintendent I.W. Powell concerning the ramifications of the logging and saw milling operations on the Cowichan Indian fishery. His letter states:<sup>48</sup>

I understand that Mr. Robertson has begun to erect a saw mill on part of the Indian Reserve at Cowichan and is probably cutting wood on the Reserve in connection with this work, no doubt in accordance with formal arrangements made with yourself and the consent of the Indians thereto obtained.

I think it was stated in a newspaper lately that the Public Works Department intended clearing out the Cowichan River.

In connection both with the cleaning of the River and the requirements of the proposed saw mill in getting sawlogs down the River, I may remind you of the absolute necessity of thoroughly explaining to the Indians the effect of these operations upon their numerous fishing weirs and of obtaining their intelligent consent to such operations and their agreement with your approval to receive compensation for any injury to their weirs.

If as I apprehended, the weirs will be generally in when the logs are being run down the River, the loss to the Indians will be great, if indeed anything can compensate them for the loss of the Salmon. I take leave to bring the above to your notice respectfully as these numerous Cowichan Indians, from a

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<sup>47</sup> Correspondence concerning the Sutton saw mill is on file at the National Archives of Canada, RG10, Volume 3662, File 9756 (1 and 2). Microfilm C-10116.

<sup>48</sup> Copy on file at the National Archives of Canada, RG10, Volume 3662, File 9756(1). Microfilm C-10116.



recent examination of their history which I have made, have past grievances to which it is undesirable to make any additions ...

It is desirable both in the interests of the white and Indian people of Cowichan that a saw mill should be established there but ... the establishment of a business which may directly affect the Indian supplies of fish should not be permitted, except on some clear understanding.

I believe the Canadian Fishery acts strictly interpreted prevent Indian weirs on small rivers, but this may be changed during the present session so as to permit such weirs to be made. In case this alteration should not be made in law, the Department for the time has a lever in its being able to refuse permission for the erection of the mill on the Reserve unless some arrangements can be come to about the weirs.

Two weeks later, on 6 May 1878, Sproat wrote the Superintendent General of Indian Affairs a letter titled "Indian Fisheries" which dealt with, in part, the Cowichan Indians. After reminding the Superintendent General that Governor Douglas had signed treaties with certain bands of Indians on Vancouver Island that concerned their right to fish, he pointed out:<sup>49</sup>

The agreements do not include the tribes of Cowichan and Chemainus probably for the reasons suggested in my memo on the history of government dealings with the Cowichan Indians ... but these tribes have never ceased to complain that agreements were made with their neighbours and not with them.

Inequity there are rather special reasons why these Cowichan and Chemainus Indians should have much consideration shown to them as tribes omitted but not on any ground of principle, from agreements made with other neighbouring tribes of the same nation.

I do not seem to have quite appreciated this, in stating in my letter to Dr. Powell of 22nd last ... that the Canadian Fishery "acts prevented Indian weirs on small rivers." The actual Canadian fishery law,

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<sup>49</sup> Copy on file at the National Archives of Canada, RG10, Volume 3662, File 9756 (1). Microfilm C-10116.

perhaps, should not govern the question at least as regards these Indians of Cowichan and Chemainus ...

The practical point of this letter is the applicability of these remarks to the order from the Public Works Department to clear out the river at Cowichan which may damage the Indian weirs and also to the bringing of logs down the river, as is proposed by a Cowichan sawmill owner, which may have the same effect.

On 30 May 1878, the following "Salmon Fishery Regulations for British Columbia" were signed into law by the Governor General in Council:

On the recommendation of the Honorable the Minister of Marine and Fisheries, and under the provisions of the Act passed in the session of the Parliament of Canada held in the 31st year of Her Majesty's Reign, chap. 60, and entitled: "An Act for the regulation of Fishing and protection of Fisheries," His Excellency, by and with the advice of the Queen's Privy Council for Canada, has been pleased to order, and it is hereby ordered, that the following Salmon Fishery Regulations for the Province of British Columbia be and the same are hereby made and adopted:

1. Drifting with Salmon nets shall be confined to tidal waters; and no Salmon net of any kind shall be used for Salmon in fresh waters.
2. Drift nets for Salmon shall not be so fished as to obstruct more than one third of the width of any river.
3. Fishing for Salmon shall be discontinued from eight o'clock A. M. on Saturdays to midnight on Sundays.

A copy of this regulation was sent to the Deputy Minister of the Interior by W.F. Whitcher, Commissioner of Fisheries, who pointed out that:<sup>50</sup>

... it should be clearly understood that Indians and whitemen are all alike subject to the fishery laws. There is, however, no present intention to apply the Fisheries Act to the Indians of British Columbia.

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<sup>50</sup> Copy on file at the National Archives of Canada, RG10, Volume 3662, File 9756 (1). Microfilm C-10116.

The fishery regulation and Whitcher's qualification of it led to the following telegram being sent by B.C. Indian Superintendent I.W. Powell to the Superintendent General of Indian Affairs: "Indians should be exempted by Proclamation or otherwise from operation of late Fishery Regulations while fishing for own use in their customary way subject to control in case of abuse."<sup>51</sup> This suggestion was sent to the Minister of Marine and Fisheries for consideration.

Throughout the summer and autumn of 1878, correspondence was exchanged between the Department of Indian Affairs and the Department of Marine and Fisheries concerning B.C. Indian fishing rights and the necessity of salmon to the Native diet. Replying to the charge by both Powell and Sproat that the B.C. Salmon Fishery Regulations would interfere with these rights, Fisheries Commissioner Whitcher wrote the Deputy Superintendent General of Indian Affairs on 12 September 1878:<sup>52</sup>

The fishery laws thus far applied to the salmon fisheries of British Columbia being quite consistent with the treaty stipulations referred to, and having been conceived and carried out in the indirect interest of the Indians, and being designed to prevent that very destructive monopoly by white people of which both [Powell and Sproat] complain on behalf of the Indians, it is difficult to understand what are the disastrous consequences which both of these gentlemen seem to apprehend. It is very probable that the establishment of salmon canneries and the extensive fishing carried on to supply them, is regarded by the Indians as encroaching on their rights and habits, just as Mr. Sproat says the dredging of the river at Cowichan, and the floating of saw logs to the mills, may damage the salmon weirs belonging to the Indians. But if such improvements and results of settlement are to be considered infringements on the fishing privileges

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<sup>51</sup> Copy on file at the National Archives of Canada, RG10, Volume 3662, File 9756 (1). Microfilm C-10116.

<sup>52</sup> Copy on file at the National Archives of Canada, RG10, Volume 3662, File 9756 (1). Microfilm C-10116.

which are claimed to be in violate under these treaties, it should be observed that the fishery laws are not to blame.

William Sutton's saw mill, the construction of which began this debate on Native fishing, was on Range VI, Section 11 and 12, Cowichan District, on Mahoney's Bay, an offshoot of Cowichan Bay. Sutton acquired the land from the provincial government, even though they had been informed in 1877 by the Indian Reserve Commission that this was part of the Cowichan Indian Reserve No. 1. During the debate over how the federal government should handle this situation, Indian Reserve Commissioner Sproat argued that most of Sutton's mill was on the foreshore and therefore Crown land separate from the reserve. The remainder of the land needed for the mill, he suggested, could be bought or leased from the Cowichan Indians.

However, B.C. Indian Superintendent Powell rejected Sproat's assumption that the mill was mostly on land not part of the reserve. From 20 October 1879 to 25 October 1879, Powell visited the Cowichan Reserve, where he induced the Indian Chiefs to surrender sixty-six acres of land to Sutton for \$200. In his subsequent report to the Superintendent General of Indian Affairs, dated 28 October 1879, Powell wrote:<sup>53</sup>

I could not agree with Mr. Sproat that Mr. Sutton's mill is built upon "the foreshore" as the bank is within ten feet of the mill, and if the Indians have any right at all to the land I should think that the mill site certainly belongs to them.

It may be that I am unable to comprehend what "the foreshore" of an Indian reserve is. I am however quite sure of the fact that the water frontage of all coast reserves constitutes the most valuable and useful part

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<sup>53</sup> Copy on file at the National Archives of Canada, RG10, Volume 3662, File 9756 (1). Microfilm C-10116. A sketch, showing the location of the mill site on Cowichan Bay, is included in the correspondence.

of them so far as the Indians are concerned, and to be deprived of such an important portion of their allotment would be an injustice which they would never willingly submit to.

Logging along the Cowichan began in the summer of 1878 and almost immediately there were complaints by settlers of erosion damage caused by the logs slamming into the banks of the river.<sup>54</sup> Describing the method used by Cowichan lumbermen to get their logs to market, one commentator has written:<sup>55</sup>

Once felled, the trees were bucked into manageable lengths and then rolled into the lake by hand-powered jacks or dragged along skid roads by horses or oxen to the water's edge. Once in the lake, the logs were made up into booms and held there to await periods of high water when they could be sluiced down the Cowichan River to tidewater. These log drives generally took place during the spring or fall and this method of log transportation was used ... until 1908 when Joseph Vipond drove 14,000,000 feet of timber down the river in the water of an early summer rainstorm.

The settlers complained that the lumbermen failed to watch the progress of the logs on their run down the river.

The first recorded complaint by the Cowichan Indians concerning bank erosion was made in the summer of 1881. On 31 August of that year, B.C. Indian Superintendent I.W. Powell informed the Superintendent General of Indian Affairs that work done on the river in 1880 by the Public Works Department was causing damage to the Cowichan Indian Reserve No. 1:<sup>56</sup>

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<sup>54</sup> See report by B.W. Pearse to the Secretary of the Department of Public Works, 14 August 1879. Copy on file in the National Archives of Canada, RG11, B1(a), Volume 514, Subject 36. Microfilm T-1104.

<sup>55</sup> Darryl Muralt, "Cowichan Lumber Boom," Whistle Punk (B.C. Forest History Magazine). Volume 1, No. 1 (Spring 1984): 3-4.

<sup>56</sup> Copy on file at the National Archives of Canada, RG10, Volume 8310, File 974/8-3-3-1(1). Microfilm C-13781.

...the clearance last year of obstructions in the Cowichan River has altered the course of the stream so that large portions of the Cowichan Reserve are being washed away, causing also much damage to Indian improvements. Mr. Agent Lomas reports, that unless something is done to remedy the evil by straightening the channel many of the Indians will experience considerable loss next winter in both land and improvements.

It is proposed to open such of the old channels as will allow the river to run in its former course, and thus avoid the great loss of good land which is constantly taking place in the sharp turns that the stream now makes.

The mouths of these channels are blocked with drift logs, and in some places ditches would have to be dug through the gravel in order to start the river into its old bed.

The ditching would be about 500 yards, but if the logs were at once cleared away it might be done more cheaply by ground sluicing as the water rises.

Powell pointed out that William Sutton was also "interested in seeing the river straightened."

Powell's letter to the Superintendent General also contains a sketch of the Cowichan River, drawn by Indian Agent W.H. Lomas, which shows the river between the Somenos Village and Quamichan Village. The map shows the river channel as it then existed, the old channels that Powell was proposing the river be re-diverted into, and the areas where soil erosion was most prevalent.

No formal reply could be found to Powell's letter at this time. However, a barely legible note written across the top of the letter instructs Powell to authorize Indian Agent Lomas "to remove the obstructions in the old channel by burning the drift wood..."

Meanwhile, the question of Indian fishing methods on Cowichan River surfaced again in 1885, based on a complaint by the Lieutenant Governor of British Columbia to G. Pittendrigh, Inspector of Fisheries for B.C. On 28 April 1885, Pittendrigh wrote the Deputy Minister of Fisheries, suggesting that the Fisheries Act be enforced on Indians and that a Fisheries officer be appointed to apply the regulations. His letter reads:<sup>57</sup>

On the 22nd [April], I received a letter from the Lieut. Governor informing me that the Indians on the Cowichan River (as also upon other streams on Vancouver Island) had weirs erected for the purpose of catching salmon, that they extended right across the river, which one would suppose would stop every ascending fish over two pounds in weight.

By enquiry made on the island which I visited the day after I received His Excellency's communication, I found that these weirs were the aboriginal method of taking fish and as there was no navigation the weirs were never opened. I called upon the Indian Superintendent, Dr. Powell, on the subject, and he at once promised, on receiving a written communication from me (already sent) to instruct the Indian Agent of the District to explain to the Indians the necessity that protective measures be employed, to protect their food supply and to cause the weirs to be opened from 6 o'clock a.m. on Saturday to 6 o'clock a.m. on every Monday for the purpose of affording a free passage for fish. So far this mode of fishing does not appear to have diminished the supply of fish [,] yet as fish are now taken in other modes and in large numbers by other people than the Indians, it is quite necessary that the law be enforced.

Before other steps are taken I would strongly recommend that a Fishery officer be appointed for Vancouver Island. He could reside at Victoria and visit the various rivers and streams as occasion might require, to guard against the contravention of the Fisheries Act.

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<sup>57</sup> Copy on file at the National Archives of Canada, RG10, Volume 3713, File 20,618. Microfilm C-10125.

The following spring, W.H. Lomas, who was also the local Indian Agent, was appointed as Fishery Guardian for Cowichan River. His notebook indicates that his principal task was to make sure the Indian weirs were open from 6 p.m. Friday to 6 a.m. Monday.<sup>58</sup> According to his notes, there were weirs at Somenos and Quamichan villages, as well as at Tzartlam and other points on the river. The notebook also indicates that the Indians were using nets on Cowichan River.

Lomas also pointed out that there was seine fishing in Cowichan Bay. Two years later, on 4 June 1888, the Cowichan Band Council passed the following resolution concerning this mode of fishing:<sup>59</sup>

Resolved: That this Council earnestly protest against the granting of licenses to fish with seines or gill nets in Cowichan Bay as the same is only done during the time that the river is too low to admit of the fish ascending to their spawning grounds, and thus last year the fish were all taken before the Indians had a chance of catching their winter food, which has caused much distress among the Cowichan Indians.

In forwarding this and other Band resolutions to B.C. Indian Superintendent Powell, Lomas, writing in his capacity as Indian Agent, suggested:

With regard to the last resolution relating to seine fishing on the Cowichan Bay I would suggest that if at any time this favor should be granted, it should be done on condition that certain Indians give up their right to weir fishing on the Cowichan River.

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<sup>58</sup> A copy of the notebook is on file at the National Archives of Canada, listed under "Indian Affairs. Agent's Notebook. RG10, Volume 10014." A microfiche copy is in the government archives division of the National Archives.

<sup>59</sup> Copy on file at the National Archives of Canada, RG10, Volume 3801, File 49,287. Microfilm C-10140.



I mention certain Indians as there are only two or three families in each Band who claim this right.

The Department of Marine and Fisheries curtailed the number of seine licenses issued that year. The salmon run the following year was listed as "unusually large",<sup>60</sup> although there is no indication this increase was caused by any cutback in commercial fishing.

In 1880, Gilbert Sproat resigned his position as Indian Reserve Commissioner and was replaced by Peter O'Reilly. Seven years later, O'Reilly was being requested to create additional Indian reserves on Cowichan Lake. In a letter dated 23 May 1887 to the Superintendent General of Indian Affairs, O'Reilly pointed out that "[r]eserves for the Cowichan tribe were allotted by the late Joint Reserve Commission in March 1887 [sic; the reserves were laid out in 1877], but by an oversight, those on Cowichan Lake, which are principally fisheries, were omitted."<sup>61</sup>

The following week O'Reilly visited Cowichan Lake and on 31 May 1887 allotted a reserve on Cowichan Lake at the head of Cowichan River. His Minute of Decision reads as follows:<sup>62</sup>

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<sup>60</sup> See Lomas' annual report, dated 19 August 1889; copy on file at the National Archives, RG10, Volume 3662, File 9756 (3). Microfilm C-10116.

<sup>61</sup> Copy on file at the National Archives of Canada, RG 10, Volume 1276. Microfilm C-13900.

<sup>62</sup> A copy of the Minute of Decision, and a map showing the Cowichan Lake Reserve, is on file at the Indian Land Registry, DIAND, Ottawa.

### Cowichan Lake Indians

#### Cowichan Lake I.R. No. O

A reserve of one hundred and seventy five (175) acres situated on the Northern shore of Cowichan Lake, near the outlet thereof, and partly within Section Five (5) Renfrew District.

Commencing at a post on the bank of Cowichan Lake, at the Southeast corner of Indian Charleys field, and running North to the Northern Boundary of Section five (5) Renfrew District, thence West to the Northwest corner of the said Section five (5), thence West five (5) chains, thence South to Cowichan Lake, and thence following the shore of the said Lake, in an easterly direction to the place of commencement.

According to a map that accompanies the Minute of Decision, the reserve contained 175 acres.

Apparently, however, 107.5 acres of this reserve land was in the possession of Charles Green. On 13 December 1888, Green relinquished to the Crown "for the resident Indians" ownership to this tract of land.<sup>63</sup>

On 8 October 1890, Cowichan Lake Indian Reserve was surveyed by Ashdown H. Green.<sup>64</sup> A note on the front page of the survey field book by Green states: "This reserve comprises the Western 25 chains of Section 5 Renfrew District, and the Eastern 5 chains of Mr. W. Swenarton's pre-emption." The Reserve, as laid out by Surveyor Green, contained 130 acres - 107.5 acres in Section 5, Renfrew District, and 22.5 acres immediately to the West.

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<sup>63</sup> A copy of Green's surrender to the Crown is on file at the Indian Land Registry, DIAND, Ottawa.

<sup>64</sup> A copy of the survey notes is on file at the Surveys and Mapping Branch, Energy, Mines and Resources, Ottawa, under B.C. 234. See also maps B.C. 99 and TBC 181.

By 1890, a number of logging operators were at work around Cowichan Lake, sending their logs down Cowichan River to the Bay. This action was causing considerable damage to Cowichan Indian Reserve No. 1. In a letter dated 23 March 1891, Indian Agent Lomas informed B.C. Indian Superintendent A.W. Vowell, who had succeeded I.W. Powell two years earlier, that he had<sup>65</sup>

...the honor to report that a considerable damage has been done to the Cowichan Indian Reserve, and large losses sustained by a number of Indians, by the recent floods, and by the manner in which Messrs Hughitt [and] MacIntyre have run their logs from the Cowichan Lake.

In some places acres of land on the banks of the river have been carried away, destroying houses, barns and fencing.

The land is alluvial and when large logs are allowed to strike the banks each log carries away a portion of the land. I enclose a rough tracing of the survey of this portion of the reserve made by Mr. Edward Mohun in 1874 on which I have marked the present river channel, and the gravel beds between the same from which the soil has been carried away.

I have also the honor to enclose a copy of a notice sent to the Mill-owners by me, one month before they had commenced to run their logs, and a copy of a letter to them on the 26th of December 1890 calling their attention to the damage by jams forming in the river.

No written reply has been received to either of these letters but on each occasion they have called on me and promised to attend to the matter at once.

No effort has been made to remove these log jams, and a large number of logs are lying in the Indian fields. At the large jamb near the junction of the Cowichan and Koksilah Rivers the River has cut itself an entirely new channel by which one Indian has lost between \$300 and \$400 worth of personal property besides land, barns and house. Another Indian by the carrying away of banks lost his barn and contents -- i.e. produce of 4½

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<sup>65</sup> Copy on file at the National Archives of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

acres of grain, many others have lost their crop of potatoes, but this was in most cases owing to flood and not to the running of saw logs.

With regard to loss by the fences being washed away, it is almost impossible to say which were removed by logs, and which by the flood only but the fact remains that several allotments are now without fences, and there is no fence timber in their neighborhood with the exception of the saw logs, but up to the present the Indians have acted on my advice and refrained from renewing their fences by splitting these logs into rails.

In favor of the mill owners, it may be said that in the winter of 1889-90 the Cowichan River did not rise to a sufficient height to admit of running large logs, and this was their first winter in the Province hence as soon as the river began to rise in December 90 [of] the logs were started but it rose so rapidly and to such an extent that not having placed proper booms to control the logs and protect the banks no number of men could prevent them running into Indian Allotments, but all this occurred before Christmas and at present no effort has been made to remove them.

At present there are several logging camps on the Cowichan Lake and the output of logs is likely to increase for many years the matter of the responsibility of the mill-owners, as to damage to property on the reserve is therefore a serious one and I would respectfully request that -

1st. I may be informed - As to the legal [claim] each Indian may have to the logs now [?] future allowed to float on his allotment.

2nd. As to what is to be understood by the River channel - is it, the former, present or the one to come, for at present the damage is still continuing, and in some cases the River is now running 300 yards from its former Channel.

3rd. As to the obligation of Mill owners to protect private property on the banks of a river in which they are running logs and as to the advice sought to give Indians in the matter, for it is well known that until attempts were made to clear this river for logging purposes very little loss of land occurred; the natives therefore attribute all losses to the actions of the Government and the lumbermen.

Neither the copy of Edward Mohun's 1874 survey map showing where Lomas had marked off the river channel, nor the copy of the notice sent by Lomas to the mill owners complaining about the damage caused by their logs, is included with the correspondence.

The Department of Indian Affairs sought legal opinions from both the Department of Justice, Ottawa, and from the legal firm of Drake, Jackson and Helmcken, Victoria, agents for the Department of Justice, on the points brought up by Indian Agent Lomas. On 13 April 1891, Drake, Jackson and Helmcken wrote Indian Superintendent Vowell:<sup>66</sup>

We are of the opinion that unless Messrs Hughitt [and] McIntyre can establish the fact that the cause which led to the damage complained of was due to vis major and not to their own default they are responsible for the loss. The Indians have no right of property nor lie upon the logs at present upon their reserve. Messrs Hughitt [and] McIntyre have no right to trespass upon the reserve. We advise that notice to remove the logs be given. We are of the opinion that the new channel must be considered as the present channel of the river - but for purposes of action the thread of the old channel is the boundary. We beg to direct your attention to Ch. 43 B.C. Stat. 1890, being "An Act to regulate the clearing of Rivers and Streams."

The Department of Justice, Ottawa, failed to make any mention of the river channel in their 29 April 1891 reply to the Deputy Superintendent General of Indian Affairs. Two months later, on 20 June 1891, Indian Agent Lomas again wrote Indian Superintendent Vowell, calling his attention to the fact <sup>67</sup>

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<sup>66</sup> Copy on file at the National Archives of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

<sup>67</sup> Copy on file at the National Archives of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

...that the channels of the Cowichan River are still obstructed by saw-mill booms, making it impossible for boats and canoes to pass except at high tide, which causes great hardship to many old Indians and inconvenience to the public generally.

I beg also to inform you in the upper reaches of the river there are already about three million feet of logs stranded while at the Cowichan Lake two gangs of loggers are constantly at work; should these logs be run before the banks of the river through the Reserve are protected by booms at loss of Indian land will undoubtedly take place greater than that of last winter.

Lomas suggested that an injunction be obtained prohibiting the running of logs down the Cowichan River until the banks of the river were properly protected. However, no injunction was taken out that year. The obstructed channels that Lomas makes reference to in his letter were at the mouth of the river.

The following January 1892, Indian Agent Lomas requested a surveyor or civil engineer be sent to examine the Cowichan River with the view of giving evidence if an injunction or legal action were undertaken. Surveyor Ashdown H. Green, who was working for Indian Reserve Commissioner Peter O'Reilly, was dispatched in February 1892. Green reported that the damage to Indian lands between 1874 and 1892 amount to 117 acres. He valued this land destroyed at \$11,782. He approximated the material property damage [houses, fences, etc.] at \$2197. All the land affected was in Somenos Village and Quamichan Village.

By the following summer no action had been taken against the lumbermen. On 19 June 1893, Indian Agent Lomas informed Indian Superintendent Vowell:<sup>68</sup>

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<sup>68</sup> Copy on file at the National Archives of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

...on Friday last the 16th [June], the sawmill Co. let loose from the Lake 2½ million feet of sawlogs [;] as none of them have passed here [Quamichan] they are supposed to be making jams further up the river, and (besides damaging land), stopping navigation by canoes...

Again, Lomas requested an injunction be taken out against the sawmill owners prohibiting the running of logs until they protected the banks of the river. This injunction was finally issued in December 1893. The Supreme Court of British Columbia also appointed Surveyor Ashdown Green to supervise the removal of the log jams already in the river.

Green reported to Indian Reserve Commissioner Peter O'Reilly the following month that:<sup>69</sup>

On examination I found that in many places the channel of the [Cowichan] river, as it existed three months ago, had been blocked by sawlogs, thus forcing the water to find an outlet through the soft alluvial soil of the reserve. In one place, the channel being obstructed, the river had divided into several small streams, none of which were deep enough to float a log, consequently there was danger, if a slight rise of the river took place, of a serious jam occurring. At the Quamichan village I observed that owing to the large amount of gravel recently brought down by the river, the bar in front of the houses had increased in size, and that a portion of the reserve on the south bank of the river had been washed away, taking with it an Indian field, orchard, and two barns containing hay. A well finished Indian house will also probably be destroyed.

I estimated that during the past three months about fifteen acres of the best land on the reserve (principally cultivated fields) have been carried away, the value of such land being \$200 an acre.

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<sup>69</sup> Copy on file at the National Archives of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

[Meanwhile, in 1894, the provincial government decided to take action to officially correct the survey errors made by Oliver Wells in 1859 [see above, pages 7-9]. On 11 April 1894, the Legislative Assembly passed "An Act respecting the Official Map of Quamichan District," being Chapter 44 of the Statutes of British Columbia. This Act approved a new map of Quamichan District, dated 20 January 1894.<sup>70</sup> On 16 March 1905, the Lieutenant-Governor of the province proclaimed the Act in force.<sup>71</sup>]

In 1894, the question of Indian fishing methods on the Cowichan River arose once more. On 23 July 1894, an amendment to the Fisheries Act was assented to which stated:<sup>72</sup>

No one shall erect, use or maintain in any of the waters of Canada, whether subject to an exclusive right of fishery or not, any net, weir, fascine fishery or other device which unduly obstructs the passage of fish; and the Minister of Marine and Fisheries or any fishery officer may order the removal of or remove any net, weir, fascine fishery or other device which, in the opinion of such minister or fishery officer, unduly obstructs the passage of fish.

The following summer, prosecutions of Cowichan Indians for illegal fishing began. An Indian was charged for erecting a weir at Somenos. A meeting of Vancouver Island Native leaders was

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<sup>70</sup> A copy of the map is on file at the Surveyor General Branch, Ministry of Forests and Lands, Victoria; see Plan 1, Tray 2, East Coast. See also H. Fry's "Field Notes of Survey made to establish the difference existing between the Indian Reserve Survey and the Official Survey made by O. Wells, Quamichan District, B.C." Copy on file under BC 65/A at the Surveys and Mapping Branch, Legal Surveys Division, Energy, Mines and Resources, Ottawa.

<sup>71</sup> See the British Columbia Gazette, 16 March 1905, pages 478-479.

<sup>72</sup> 57-58 Victoria, Chapter 51, Section 5, Subsection 16, "An Act further to amend the Fisheries Act."



held to discuss this government action, and it was decided to hire a lawyer, S. Perry Mills of Victoria, to defend the Cowichan Indian.<sup>73</sup>

The case against the Cowichan Indian was eventually dismissed by the court. Mills successfully argued that the weir did not prevent fish from ascending the river.

On 2 July 1895, Mills wrote a personal letter to Sir Charles H. Tupper, Minister of Justice, suggesting that:

Apart altogether from the legal aspect of the question I would respectfully submit that an amendment of the [Fisheries] Act allowing the Indians of British Columbia to take salmon for food by means of weirs subject to government inspection would be a wise step on the part of the Government [and] would prove to them [the Indians] that the Government desires to deal justly with them. Much trouble, possibly of a serious kind, would thereby be prevented.

Opposing this suggestion was the Vancouver Island Fish and Game Protection Society, whose Secretary informed the Minister of Marine and Fisheries on 19 December 1895 that the two weirs on Cowichan River, at Somenos and Quamichan,

are formed by making a permanent framework of stakes [and] poles entirely across the stream, and upon this framework are placed hurdles made of small battens from one inch to one inch and a quarter apart. Stages are erected at each side of the river, below the weirs, from which the fish endeavouring to ascend are netted or speared.

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<sup>73</sup> Correspondence dealing with this issue is on file in the National Archives of Canada, RG 23, Volume 164, File 583. Microfilm T-2853.

The Society argued that the weirs were blocking the ascent of trout, which was not a traditional food of the Indians but were now being taken by Cowichan Indians for sale to settlers and towns people.

A picture of the Quamichan weir was taken by photographer Frederick Dally, circa 1866. The picture shows the weir stretched across the river, with a section that could be opened and closed to allow canoes and fish to pass through.<sup>74</sup> In September 1897, E.E. Prince, Commissioner and General Inspector of Fisheries for Canada, visited Cowichan River and informed the Minister of Marine and Fisheries that:<sup>75</sup>

I found in my progress for many miles up the [Cowichan] river that at various points the whole channel was barred up by [?] work barriers. They varied with the breadth of the river, some being 40 yards others 20 or 25 yards wide. I counted 98 poles each 6 or 8 feet high and supported by 12 leaning poles or supports of great length. To the upright poles was tied by string pliant cherry bark lattice or basket work with spaces at the most 1 to 1½ inches apart. Channels are dug out at the side below each barrier and here the salmon crowd and linger and are easily netted and speared from a small platform specifically erected. In many cases a door of [?] work is arranged a foot wide which opens when a salmon pushes against it [and] a pole is so attached that it taps the Indian on the head, he lying asleep on this platform [and] he is thus informed that salmon are ascending.

Prince included a sketch of the Indian weir in his report. He told the Minister that below Quamichan smaller barriers were also in the river. He concluded his report by stating:

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<sup>74</sup> A copy of the photograph is on file in the National Photography Collection, National Archives of Canada, C-65097.

<sup>75</sup> Copy on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

The object of the Indian is to stop every salmon from ascending [and] no more effective and destructive means could be devised. Salmon ascend the river it is said all the year, but the Indians put in the weirs about the end of May [and] they are fished until the middle of Sept. Were the Indian less idle [and] careless the salmon would be already extinct in the Cowichan, but storms and decay cause holes etc [and] some fish get through and reach other weirs further up while a small portion reach Cowichan Lake.

Representatives of the Natives and the sports fishermen both petitioned the Minister of Marine and Fisheries in support of their differing views, but on 19 March 1898 Dominion Commissioner of Fisheries E.E. Prince informed Fisheries Inspector John McNab of New Westminster that<sup>76</sup>

...I am to instruct you to see that the weirs are removed, and to enable you to do this, you are authorized to employ such aid and take such measures to do away with the abuses in question, as you judge to be necessary.

Although the correspondence on file at the National Archives of Canada does not indicate why, it appears that this order was never totally fulfilled.

In 1898, loggers were again allowed to use the Cowichan River, the practice having been curtailed by a legal injunction since 1893. A new company, the Cowichan Lumber Company, requested permission to float their nearly fourteen million feet of logs from Cowichan Lake to the sea. Surveyor Ashdown Green examined Cowichan river prior to permission being given and reported to B.C. Indian Superintendent A.W. Vowell on 12 November 1898 that

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<sup>76</sup> Copy on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

he had examined the booms in Cowichan Lake and had also examined the river by Indian canoe from Scutz canyon to the Town of Duncan.<sup>77</sup>

At Scutz [canyon] and falls rocks have been removed and the channel widened, thus avoiding the difficulties that formerly presented themselves.

Between Scutz and Duncans, a distance of about sixteen miles, no further damage is likely to occur to either of the two Indian fishing stations.

From Duncans to the sea, 4 miles, the river flows through low flat land but a few feet above the level of the water, and it is here that the greatest damage has been done in the past. To obviate this channels have been cut through gravel bars to keep the water away from the banks, snags and drift timber have been removed from the centre of the river, and in places, where the current sets against the soft alluvial soil, boom-stick have been placed to protect it.

No documents are on file at the Indian Land Registry, DIAND, indicating that any permission was requested of or given by the Department of Indian Affairs to work around Scutz canyon or falls.

In 1900, the residents of Cowichan Indian Reserve No. 1 were again petitioning the Department of Indian Affairs to curtail the damage to their land caused by the running of logs down the river. Superintendent Vowell reported to Ottawa on 13 July 1900 that:<sup>78</sup>

Periodically Mr. Green has proceeded under instructions, to inspect the river, especially when it was considered that damage might be done through

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<sup>77</sup> Copy on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

<sup>78</sup> Copy on file at the National Library of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

freshets or when injury by logs was reported to have occurred, and in nearly every instance he has found the loss greatly exaggerated.

In 1905, though, Superintendent Vowell wrote his superiors in Ottawa that three and a half acres on the right bank of Cowichan River opposite Quamichan Village had been swept away. Surveyor Green again checked out the river and on 19 September 1905 suggested to Superintendent Vowell that the southern channel be diverted into the northern channel above Quamichan Village by means of a dyke. On 3 November 1905, permission to build the dyke was given. Two years later, on 26 August 1907, construction was also begun on a dam across the Cowichan River at a point 400 yards above Quamichan Village to completely block off the southern channel. The following spring, Surveyor Green informed Superintendent Vowell that logs sent down the river by the Cowichan Lumber Company washed away both the dyke and the dam. Concluding this report to Vowell, written on 2 April 1908, Green wrote:<sup>79</sup>

I do not think it probable that logs will ever be run again on the Cowichan river. The bed is now so wide and shallow that, except during unusually high freshets, logs cannot float for any distance. The contract for driving has always been more or less of a gamble; if a heavy freshet occurred the contractor made money; if, as during the past two years, the river was only uniformly high he lost or made very little, the consequence is that hardly any work is undertaken to clear the river until all hope of a freshet has gone.

The Cowichan River was never again used to transport sawed logs to market.

Meanwhile, in 1905, the Department of Marine and Fisheries began a concerted campaign to eliminate Indian fishing weirs on British Columbia rivers. Two geographic areas singled out by the

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<sup>79</sup> Copy on file at the National Library of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

Department for the elimination of these barricades were on the upper Skeena and Babine Rivers, and the Cowichan River. On the upper Skeena and Babine, an informal understanding was eventually worked out in 1906 with the Department of Indian Affairs to replace the weirs with government-supplied nets.<sup>80</sup> On the Cowichan River, although the barricades were not removed during this period, their numbers were greatly reduced. In a report to R.N. Venning, Assistant Commissioner of Fisheries, dated 24 June 1907, Fisheries Inspector Edward Taylor wrote:<sup>81</sup>

The fact that a few years ago the Indians had over a dozen fish weirs on the Cowichan River; while last year there was [sic] three, and they were opened two days in the week, and taken up altogether the first of July. The greatest number of fish taken in the Indian weirs were spent fish on their way down the river from the spawning grounds.

We all know that the Indian must be considered in a different light from our White people, and they require different treatment. I think the advance with the Indian has been very satisfactory, and illegal fishing is becoming less every year. The Indian does not consider his methods for taking fish illegal; but look upon them as his right, and we cannot expect to change his views on this delicate subject (the way to obtain his food) in one year.

Five years later, however, complaints again arose as to Indian fishing methods on the Cowichan River. On 30 January 1912, Superintendent of Fisheries W.A. Found asked British Columbia's Inspector of Fisheries, F.H. Cunningham, to report on the complaint that weirs were still being used on the Cowichan and

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<sup>80</sup> Correspondence dealing with the so-called Babine Barricade Agreement is on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

<sup>81</sup> Copy on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

"that at certain times of the year they are not being opened at all." On 7 March 1912, Found again wrote Cunningham that it had been reported that<sup>82</sup>

... at any time ... from twenty to thirty nets [are] stretched across the River, and that the [Fisheries] Guardian knows that these nets are there, and that the Indians supply hotels at Duncans with fish so caught...

The Minister is exceedingly anxious that violations of the law should be at once put an end to, and the desirability of seeing that such an important sporting river as the Cowichan is not netted is so obvious as to require no further comment.

When Cunningham finally reported on 11 June 1912, he informed Superintendent Found that most of the barricading was being done by older members of the Cowichan Band, the younger members finding other occupations. The Fisheries Guardian on the river had destroyed seventeen nets in January and two Band members were fined. In March, seven set nets were destroyed, and in April there were only two illegal nets found in Cowichan River. Cunningham concluded by stating: "Inspector Taylor remarks that the reports of illegal fishing are most unreliable, and that the information received ... come from unreliable sources ..."<sup>83</sup>

Most of the problems dealing with fishing on the Cowichan River were brought before the Royal Commission on Indian Affairs for the Province of British Columbia, established in 1913. This Royal Commission was set up to solve the land title problem whose roots dated back to the Indian Reserve Commission and before. During the life-span of the Indian Reserve Commission, which existed from 1876 to 1910, over 1,000 Indian reserves had been

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<sup>82</sup> Copy on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

<sup>83</sup> Copy on file at the National Archives of Canada, RG23, Volume 164, File 583. Microfilm T-2853.

allotted in the province. But while these reserves had been approved by the provincial Chief Commissioner of Lands and Works, no formal recognition by the British Columbia government was every given these reserves in the guise of Orders in Council or publication notices in the B.C. Gazette.

In 1912, Dr. J.A.J. McKenna, representing the federal government, and Premier Richard McBride of British Columbia signed a document, now known as the "McKenna-McBride Agreement", establishing a five-man Royal Commission to investigate and report on Indian lands in the province.<sup>84</sup> The Royal Commission was given the power to adjust reserve acreage by reducing the size where the Commissioners deemed the Indians had more land than needed, to determine the area to be added in cases where bands had insufficient land, and to set aside reserves for bands that had not yet received any. The Commissioners were also authorized by a separate federal Order in Council of June 1913 to gather information on issues which, although extraneous to the terms of the McKenna-McBride Agreement, were nevertheless considered to effect the rights and interests of the Indian population. From 1913 to 1916 the Royal Commission travelled the province compiling evidence.

On 27 May 1913, the Royal Commissioners held a one-day sitting at the church in Comeakin Village to hear the views of the Cowichan Valley Indians.<sup>85</sup> The common complaint among the native spokesmen was the lack of arable land on the reserves for farming and raising their cattle. All the Indians agreed that their

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<sup>84</sup> A copy of the McKenna-McBride Agreement is on file at the National Archives of Canada, RG2/1, 3 February 1930, Order in Council P.C. 208.

<sup>85</sup> A copy of the Royal Commission transcript of evidence is on file at the Indian Lands Registry and Research Division, Lands, Revenues and Trusts Operations Branch, DIAND, Ottawa.



individual holdings were less than 10 acres each, and that those with cattle had to let their animals roam the roadways for lack of pasture. Many of the younger Band members, it was stated, did not have any land.

The cause of this problem, most native spokesmen agreed, was because the reserve, as originally defined by Sir Jame Douglas in the mid-nineteenth century, was continually reduced by successive colonial and federal bureaucrats. One Band member claimed that the town of Duncan was situated on land that was once part of Cowichan Indian Reserve No. 1.

Another complaint echoed by several Band members was that the whiteman was continually enacting and enforcing laws that interfered with the traditional lifestyle of the Cowichan natives. This was particularly true of the fishing laws. Band spokesmen stated they wished to catch whatever fish, whenever they pleased. Several also stated they wanted the right to sell fish to local whites.

In July 1913, Surveyor Ashdown H. Green and Cowichan Indian Agent W.R. Robertson made declarations to the Royal Commission on the character of the land in the Cowichan Agency. The declarations were compiled and presented as Exhibit A 48 in the evidence.<sup>86</sup> The nine Cowichan reserves were said to total 6,070.5 acres. However, 555 acres had to be deducted "for river bed and destroyed land, sloughs, roads and railways (subsequent erosions by river since 1901 not estimated or included in the above)." Another five acres had to be deducted "for agricultural lease" and ten acres "for Glenora Road". This left a total balance for the reserves of 5,500.5 acres.

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<sup>86</sup> Copy on file at the National Archives of Canada, RG10, Volume 11023, File 637A. Microfilm T-3961.

Of this 5,500.5 acres, it was concluded:

1,429 acres are entirely unfit for cultivation. These consist of mountains, rocks or dry gravel land. Of the balance 1,800 acres are described as second class land and not suitable as such for farming, but only for pasture, at the best. 3,000 acres would be a very liberal allowance of good land in the whole of the reserve.

However, when the official four-volume report of the Royal Commission was finally published in 1916, it was stated in the tables of statistics that the nine Cowichan reserves totalled 5,494.86 acres after deductions for land erosion, roads, railway right of ways and agriculture leases.<sup>87</sup> No mention is made of any deductions "for river bed".

On 23 July 1913, the Royal Commission passed a Minute of Decision confirming the reserves of the Cowichan Band. This Minute reads:<sup>88</sup>

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<sup>87</sup> British Columbia. Report of the Royal Commission on Indian Affairs for the Province of British Columbia. Victoria: Acme Press, 1916, p. 279. See also copy on file at the National Archives of Canada, RG10, Volume 1044. Microfilm T-1461.

<sup>88</sup> British Columbia. Report of the Royal Commission on Indian Affairs for the Province of British Columbia, p. 299.

Cowichan Agency - Cowichan Tribe

ORDERED: That the Indian Reserves of the Cowichan Tribe, described in the Official Schedule of Indian Reserves, 1913, BE CONFIRMED, as now fixed and determined and shewn on the Official Plans of Survey, viz.:

- "No. 1 - Cowichan, 5723.00 acres;
- No. 2 - Theik, 75.00 acres;
- No. 3 - Kilpahlas, 51.00 acres;
- No. 4 - Est Patrolas (Rogers Lake), 75.00 acres;
- No. 5 - Tzartlam, 16.00 acres;
- No. 6 - Kakalatza, 24.00 acres;
- No. 7 - Skutz (A), 18.00 acres;
- No. 8 - Skutz (B), 40.00 acres;
- No. 9 - Cowichan, 48.66 acres."

The total acreage of the nine Cowichan reserves listed in this Minute of Decision is 6,070.66 acres. On 6 July 1914, the Minute of Decision for the Cowichan Band was confirmed by the Royal Commission's Interim Report No. 39.<sup>89</sup> However, on 19 February 1916, an amendment to the Minute of Decision was passed by the Royal Commission that reads:

ORDERED: That the Minute and Resolution of the 23rd July, 1913, covering confirmations of Indian Reserves One (1) to Nine (9), both inclusive, of the Cowichan Tribe, BE RECONSIDERED and AMENDED by striking out of the fourteenth line thereof the figures "40.00" and inserting in lieu thereof the figures "37.18," an area of 2.82 acres having been acquired for right-of-way purposes by the Canadian Pacific Railway Company under Interim Report No. 1 of this Commission, dated the 21st day of May, 1913.

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<sup>89</sup> Copy on file at the National Archives of Canada, RG10, Volume 3650, File 8489(1). Microfilm C-10114. See also RG10, Volume 1044. Microfilm T-1461; and Exhibit A29 of the Royal Commission, in RG10, Volume 11023, File 637A. Microfilm T-3961.

Meanwhile, on 5 June 1913, members of the Royal Commission took an excursion up the Cowichan to see the Cowichan Lake Indian Reserve. On the way, three members stopped to view Tzart-lamr Indian Reserve No. 5 and Kakalatza Indian Reserve No. 6. In the Commission's evidence it is stated:

On the way from Duncan to Cowichan Lake, three of the Commissioners, (viz the Chairman, with Dr. McKenna and Mr. J.P. Shaw) went off the main trail to visit two reserves. One [Tzart-lamr] was stated to contain 16 acres, and the other [Kakalatza] about 25 acres. Mr. W.R. Robertson, the Indian Agent, who was with us, stated that the 16-acre reserve was only used for fishing on the River. (He must be examined as to that.) The land had apparently been cleared at one time, and, possibly, cultivated, but a number of young evergreen trees had grown up, not very close together, however, and the ground would afford good pasturage for sheep. It would take very little to clear these evergreens off, and fit the land for cultivation. No persons reside on the property, so Mr. Robertson stated.

The other tract of land was all wooded. Very little of it appeared to be wood fit for saw logs, and that place also was stated by the Indian Agent to be unoccupied, but used as a Fishing Station.

(Mr. Robertson should be examined under oath as to the size of these reserves, and as to how they are occupied, if at all.)

After leaving these two reserves, the Commissioners continued up the trail to Cowichan Lake Indian Reserve. In the evidence it is stated:

This Reserve is not cleared, with the exception of a very small portion, which appears to be grown up again with small bush. The rest of the Reserve is wooded. Possibly a small quantity of the wood would be fit for logs, but not much. Some of it would be fit for cordwood or piles. 5 chains across the western portion of the Reserve have been transferred to H. Lomas, by the E. & N. Railway Company. The Commission must look into this (see plan). Examine Mr. Robertson as to the occupation of this reserve-by whom, and how.

On 28 July 1913, the following Minute of Decision was passed by the Royal Commission:<sup>90</sup>

Cowichan Agency - Cowichan Lake Tribe

ORDERED: That Cowichan Lake Indian Reserve of the Cowichan Lake Tribe, described in the Official Schedule of Indian Reserves, 1913, BE CONFIRMED as now fixed and determined and shewn on the Official Plan of Survey, viz.: "Cowichan Lake, 103.035 acres."

The following day, 29 July 1913, the Commission wrote the Department of Indian Affairs requesting information on the acreage of Cowichan Lake Indian Reserve. The 1902 Schedule of Reserves listed the reserve as being 130 acres. "According to the official plans," the Commission wrote, "22.5 acres of the 130 acres is outside the Reserve, leaving 107.5 acres as the acreage of this Reserve, inclusive of railway right-of-way and road allowance."

The Department of Indian Affairs forwarded their files to the Royal Commission. Commissioner J.A.J. McKenna, based on these files, wrote the following memorandum in 1915:<sup>91</sup>

Commissioner O'Reilly's Minute Decision of the 31st May 1887, set aside a tract of land which he estimated to contain 175 acres as an Indian Reserve on the north shore of Cowichan Lake, and his description thereof puts the said tract mainly within Section 5, Renfrew District, and a portion in the section adjoining, upon the West.

According to a report to the then Superintendent-General of Indian Affairs by Mr. Commissioner O'Reilly on the 1st March, 1889, 107.5

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<sup>90</sup> British Columbia. Report of the Royal Commission on Indian Affairs for the Province of British Columbia, pages 299-300.

<sup>91</sup> Copies on file at the National Archives of Canada, RG10, Volume 1023, File 637. Microfilm T-3961. See also documents on Cowichan Lake in RG10, Volume 8066, File 974/31-2-3-7, C.N. Pt. 1. Microfilm C-9658.

acres, being the area shown by the Survey to be within said Section 5, was secured by an arrangement effected with Mr. Charles Green, who had previously purchased a tract inclusive of the said area, which by this arrangement he relinquished "for the resident Indians."

In a communication of the 5th December, 1888, addressed by Mr. O'Reilly to John Trutch Esq., Dominion Lands Commissioner of the E. [and] N. Railway, attention was directed to the fact that an application of one William Swenarton impinged, to the extent of some 20 acres, upon the Cowichan Lake I.R. and "would deprive the Indians of a portion of the fenced and cultivated field", which portion is the portion extending beyond said Section 5 to the west.

In the papers before me there is no material further bearing upon the alleged impingement or the protest of Mr. O'Reilly.

The Reserve was surveyed by Mr. Ashdown H. Green B.C.L.S., in 1890 and the Plan of Survey shows the Reserve to consist of 130 acres--107.5 acres being in Section 5, Renfrew District, and 22.5 acres lying immediately west thereof.

The Commission being in doubt as to the area of the Reserve made inquiry thereanent to the Department of Indian Affairs, by letter dated 29 July 1913. In the letter in question, however, this statement was inaccurately made: "According to the official plans, however, 22.5 acres of the 130 acres is outside the Reserve, leaving the 107.5 acres as the acreage of this Reserve, inclusive of railway right of way and road allowance." The official Plan of Survey does now shew 22.5 acres as outside the Reserve but outside of Section 5, the dotted line running through the Reserve being for the purpose of indicating the western line of the said Section 5.

The Department in a reply, dated the 6th August, 1913, to this letter, informed the Commission that the area of the said Reserve "inclusive of railway right-of-way and road allowance, is 107.5 acres", taking that area, as it appears from the said letter, from the area described in the aforesaid report of Mr. Commissioner O'Reilly, which did not deal with or purport to deal with the entire Reserve but only with that portion thereof, viz. 107.5 acres, which was covered by the Charles Green purchase and which was relinquished for Reserve purposes.

In my opinion the question submitted in the Department's letter of the 19th ultimo, viz. as to whether in the Commission's opinion action should be taken to recover the 22.5 acres, is not one which this Commission may properly answer. The Commission confirmed a Reserve at Cowichan Lake of an area of 107.5 acres [sic; according to the published Report of the Royal Commission, the area confirmed was 103.035 acres], that being the area stated by the Department as forming the said Reserve and being the only land in that locality not otherwise alienated, and in the judgment of the Commission constituting an area sufficient to meet the reasonable requirements of the Indians.

It appears to me that the question submitted to the Commission as to whether action should be taken to recover the 22.5 acres is one rather for the law advisers of the Dominion.

The Royal Commission on Indian Affairs also examined the thorny problem of Indian fishing rights and methods in British Columbia,<sup>92</sup> especially on the Cowichan River. On 9 April 1914, a committee was formed, consisting of Department of Fisheries Inspector E.G. Taylor, the Assistant Commissioner of the Provincial Fisheries Department, John P. Babcock, and Cowichan Indian Agent W.R. Robertson, to investigate matters in connection with Indian fishing in the Cowichan District. On 2 July 1914, a meeting was called by the committee at Duncan and attended by Indians, white anglers, and provincial politicians. According to the committee's report to the Royal Commission:<sup>93</sup>

The Indians through their spokesmen, laid stress upon the fact that they had been accustomed to fish with weirs and other native appliances and they protested strongly against any interference with their rights.

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<sup>92</sup> See especially "Memorandum by McGregor Young, Esq., K.C., re Fishing Rights of Indians." Copy on file at the National Archives of Canada, RG10, Volume 11020, File 517. Microfilm T-3957.

<sup>93</sup> Copy on file at the National Archives of Canada, RG10, Volume 11020, File 517. Microfilm T-3957.

They claimed that the weirs were not responsible for any depletion of the fish: that a proportion of salmon and all trout passed the weirs and reached the spawning beds in sufficient numbers to stock these, and that any falling off which had occurred was due to the white man's method of fishing. They instanced the situation which had existed in the past when weirs in the upper reaches of the river caught as many fish as weirs operating below to substantiate this. The Indians stated that from fifteen to twenty-one weirs had existed in the past and they demanded the right to construct at least eight weirs along the course of the river. A section of an Indian weir was produced for the committee to examine. Measured, the interstices were found to average one and one half to one and one quarter inches in width.

It was brought out in evidence by the Indians that in addition to weirs, nets both staked and drifting were employed. One witness expressed the opinion that about half the tribe at times used nets.

Among the white witnesses, opinions were divided as to the alleged destructive nature of traditional native fishing methods. The Cowichan Anglers Association argued that the weirs prevented the upward migration of trout and salmon and requested strict controls if they were allowed to be used in the river. E.B. McKay, a former provincial Surveyor General who claimed to have fished in the Cowichan River almost every year since 1878, claimed the weirs had little effect on fishing. He blamed the logging industry for destroying the spawning grounds.

After hearing all the witnesses, the committee made the following recommendations:

The Indians be granted the privilege of placing three weirs in the Cowichan River, one at Quamichan, one at Somenos, and another at a point to be decided upon, and one in the Koksilah River.

That the lattice work of the weir provide for open spaces of not less than  $2\frac{1}{2}$  inches in width.



That the weirs be opened for the free passage of fish from Friday at 6 p.m. in each week to the Monday following at 6 a.m. and the opening shall be not less than 15 feet in width in the centre of the weir.

That should an additional weir be desired at either of the following places in the upper reaches of the Cowichan River, viz., -- Kakalatza, upper or lower Skutz, Sahtlam, a notification should be given through the Indian Agent to Inspector of Fisheries Taylor to that effect; that he shall grant such permission, stipulating that a space to be determined by him, varying with the location as in his judgment, may be necessary, such space to remain open for the free passage of fish, and boats and canoes, at all times of the day and night.

That in view of the privileges, above granted, it is distinctly understood that the use of nets of any kind is strictly prohibited and will not be condoned.

On 23 December 1915, a meeting between the Royal Commission and representatives from federal and provincial fisheries departments was held in Victoria to discuss "fishing privileges of Indians in B.C."<sup>94</sup> The situation on the Cowichan River was among the matters discussed at this meeting.

According to the transcript, there were two Indian weirs on the Cowichan River in 1915. However, Dominion Fisheries Inspector E.G. Taylor told the meeting that the Fishery Overseer on the Cowichan reported that the lattice work on these weirs left spaces less than two inches apart. Taylor told the Royal Commission:

... I must say in justice to this matter that owing to the unusual conditions that prevailed this year it could hardly be taken as a fair test as the water was unusually low - not only in the Cowichan River but in all the rivers, owing to the long dry season, because

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<sup>94</sup> A transcript of this meeting is on file at the National Archives of Canada, RG10, Volume 11020, File 517A. Microfilm T-3957.

you must remember that these weirs are well up the river - five or six miles at least, and if there were many salmon up the river I don't see why they couldn't get above the weirs. Some years ago in placing this matter before the Department, I was rather too optimistic and gave the Department to understand that I believed in treating the Indian in such a way that he would realize that it was in his own interests that the weirs should be finally done away with. At that time, of course, there were quite a number, and we were doing pretty well until this question arose two years ago, so that the Department feels that my views were not correct, and that I was far too optimistic, and that it is just as far away from the desired end as ever, and looking upon the Cowichan River as a very valuable river, that it is now time that some measures be taken to safeguard the fishing in that river.

No firm resolution concerning the Cowichan River was decided upon at this meeting. On 12 January 1916, the Chairman of the Royal Commission wrote both the Governor General in Council and the British Columbia Lieutenant Governor in Council concerning "fishing rights and privileges of Indians in B.C."<sup>95</sup> Concerning the use of Indian weirs in the Cowichan River, this memorandum summarized the discussion which took place on 23 December 1915 and concluded:

Inasmuch as the compromise agreement with the Indians would appear to be working satisfactorily [this is a reference to the recommendations of 2 July 1914], the [Royal] Commission is of opinion that it would be impolitic and unwise to make any change therein detrimentally affecting the interested Indians.

Meanwhile, in June 1915, the Department of Indian Affairs and local white residents authorized the construction of flood gates near Comeakin Indian Village. The purpose of the Comeakin Dyke, according to correspondence, was to reclaim land on the Cowichan River. It was estimated that 75.5 acres would be reclaimed - five acres owned by the local Roman Catholic Church, 7.5 owned by

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<sup>95</sup> Copy on file at the National Archives of Canada, RG10, Volume 11020, File 517. Microfilm T-3957.

a Mr. C. Walker, 10.25 owned by a Mr. J. Hutcheson, and 52.75 owned by the Cowichan Indians.<sup>96</sup> On 21 September 1916, Surveyor Ashdown Green, in charge of the construction of the dyke, reported that:

The Indians have this summer cut a good deal of hay from the reclaimed land, it certainly was very rough feed but it will improve yearly especially if they will sow cultivated grass seed upon it.

The following September, Green reported that the Indians broke up one and a half acres of the reclaimed land and harvested wheat, oats and potatoes. They also harvested ten to twelve acres of wild grass.

Throughout the 1920s, 1930s and 1940s, the problem of land erosion at various points within Cowichan Indian Reserve No. 1 was continually being discussed within the Department of Indian Affairs.<sup>97</sup> In 1931, as the federal and provincial governments began negotiations to convey Indian lands in British Columbia to the federal government, the question of erosion on the Cowichan Reserve was brought up. In a letter dated 28 April 1931 from Indian Commissioner W.E. Ditchburn to the Deputy Superintendent General of Indian Affairs, it was pointed out that:<sup>98</sup>

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<sup>96</sup> Correspondence along with maps and a photograph, are on file at the National Archives of Canada, RG10, Volume 7885, File 36152-8. Microfilm C-12134.

<sup>97</sup> Correspondence dealing with the erosion problem on the Cowichan and Koksilah Rivers during this period is on file at the National Archives of Canada under: RG10, Volume 7885, File 36152-8A. Microfilm C-12135; RG10, Volume 10327, File 974/8-4-3-1. Microfilm T-7595; RG10, Volume 6586, File 1A-1780-5. Microfilm C-15091; and RG10, Volume 6512, File Ind 15-1-114. Microfilm C-15045.

<sup>98</sup> Copy on file at the National Archives of Canada, RG10, Volume 7785, File 27150-3-18(1). Microfilm C-12065.

A question came up quite recently as to what acreage figures shall be considered correct [for the conveyance of the reserves to the federal government]: those mentioned in the Official Schedules or those shown on the reserve maps. For instance, in the Cowichan Agency, the Cowichan Indian Reserve No. 1 is shown in the Schedule as comprising 5,723 acres, whereas the map of the reserve as surveyed by E. Mohun in 1874 shows it to have been 5,889 acres. This discrepancy of 166 acres is, however, accounted for by the survey of A.H. Green in 1902<sup>99</sup> as having been caused through erosion of the banks of the Cowichan River ...

The Deputy Superintendent General replied on 5 May 1931 that: "The question as to acreage which you bring up in your letter could be dealt with by accepting in general the original acreages shown in the schedule." It is unclear by this statement whether he meant the original acreage shown on the 1874 map or the reduced acreage listed in the 1913 Schedule of Indian Reserves in the Dominion. However, when the British Columbia Government passed Order in Council 1036 on 29 July 1938, conveying the Indian reserves outside the Railway Belt and the Peace River Block from the provincial to the federal government, the total acreage of Cowichan Indian Reserve No. 1 was listed as 5594 acres. This land was broken down as follows:

Cowichan District

Range 1, Secs. 11, 12, 13, 14, 15, 16, 17  
Range 2, Secs. Frac. 12, 13, 14, 15, 16  
Range 3, Secs. 14, Pt. 15, Pt. 16  
Range 4, Secs. 15  
Range 5, Secs. Fr. E.  $\frac{1}{2}$  11, E $\frac{1}{2}$  12, E $\frac{1}{2}$  13, 14, 15  
Range 6, Secs. Fr. E.  $\frac{1}{2}$  11, Fr. E.  $\frac{1}{2}$  12, Fr. 13  
Range 7, Secs. Fr. 8, Fr. 9, Fr. 10, Fr. 11, Fr. 12,  
Fr. 13, Fr. 14, Fr. 15  
Range 8, Secs. Fr. 7, Fr. 8, Fr. 9, Fr. 10, Fr. 11,  
Fr. 15

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<sup>99</sup> A copy of Green's 1902 survey notes (listed as BC 74/A) are on file at the Surveys and Mapping Branch, Legal Surveys Division, Energy, Mines and Resources, Ottawa.

Quamichan District

Range 8, Secs. N.  $\frac{1}{2}$  of 10, 11, 13, 14, 15, 16, 17  
Range 7, Secs. W.  $\frac{1}{2}$  & N.  $\frac{1}{2}$  of E.  $\frac{1}{2}$  10, 11, 14  
Range 6, Secs. 15, 16  
Range 5, Secs. 12, 13, 14, 15, 16, E.  $\frac{1}{2}$  17, E.  $\frac{1}{2}$  18  
Range 4, Secs. 12, 13, 14, 15, 16  
Range 3, Secs. 12, 13, 14, 15, 16  
Range 2, Secs. 12, 13, 14

Also transferred by this Order in Council were the following reserves:

Theik Reserve No. 2, Cowichan District, Range 3, Section 7. 75 acres.

Kil-pah-las Reserve No. 3, Cowichan District, Range 5, Section 6. 51 acres.

Est-patrolas Reserve No. 4, Shawnigan District, Range 5, Section 19. 75 acres.

Tzart-lam Reserve No. 5, Sahtlam District, on the left bank of the Cowichan River. 16 acres.

Kakalatza Reserve No. 6, Sahtlam District, on the left bank of Cowichan River. 24 acres.

Skutz Reserve No. 7, Cowichan Lake District on the left bank Cowichan River, at Skutz Canyon. 18 acres.

Skutz Reserve No. 8, Cowichan Lake District, on both banks of Cowichan River, at head of Skutz Canyon. 40 acres.

Cowichan Reserve No. 9, Cowichan District, West  $\frac{1}{2}$  Section 11, Range 2, near the confluence of the Koksailah and Cowichan River. 48.66 acres.

Cowichan Lake Reserve, Cowichan Lake District on northern shore of Cowichan Lake, near its outlet and partly on Section 5 and partly on Island railway land. 107.50 acres.

In 1947, ownership of the bed of the Cowichan River as it passed through Cowichan Indian Reserve No. 1 was discussed. Indian Agent R.H. Moore wrote his superiors in Ottawa requesting

clarification on this issue and his letter was forwarded to Surveyor General F.H. Peters. On 2 June 1947, Peters wrote Moore as follows:<sup>100</sup>

The Minutes of Decision of the Commission dated February 17, 1877, describe the reserve by sections and ranges and they contain no reference to the bed of the said river being excepted.

The area of the reserve shown as 5889 acres on plan No. L. 240 has been recalculated by us and we find the area correct. In our computation the bed of the river was included.

Our computation included the following parcels which were shown on the plan as part of the reserve although they had been alienated:

- (1) Portion of Secs. 8, 9, and 10 R. 8, Quamichan, comprising 125 acres.
- (2) Portion of Sec. 12, R. 2, Cowichan, comprising 4 acres.
- (3) Portions of Secs. 14 and 15, R. 6, Cowichan, comprising 100 acres.
- (4) Portion of Secs. 11 and 12, R. 6, Cowichan, comprising 66 acres.

These particular parcels which comprise 295 acres have since been acquired from the original owners and are now part of the reserve.

By Provincial Order-in-Council No. 1036 dated July 29, 1938 the reserve was transferred to the Dominion as comprising 5594 acres instead of 5889. The difference of 295 acres is the land that was acquired from the original owners.

Whether any provincial statutes have been passed whereby the bed of such rivers are claimed by the province we are not in a position to state.

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<sup>100</sup> Copy on file at Surveys and Mapping Branch, Legal Surveys Division, Energy, Mines and Resources, Ottawa.

In December 1960, this issue was raised again when Surveyor General R. Thistlethwaite wrote W.C. Bethune, Chief, Reserves and Trusts, Indian Affairs Branch, Department of Citizenship and Immigration, asking Bethune to "please inform us whether or not these rivers [Cowichan and Koksilah] are considered to form part of the reserve."<sup>101</sup> [It is unclear at this point why a Surveyor General would write the Indian Affairs Branch for a response to a question that he himself should determine.] Bethune informed the Branch's Legal Adviser that, after reading provincial Order in Council 1036, "we find that it does not exclude from the reserve any rivers or river beds, and therefore we are of the opinion that the Cowichan and Koksilah Rivers form part of the Cowichan Indian Reserve No. 1." It should be pointed out that the Order in Council does not specifically include the river beds either.

As well, it may have been impossible to determine the acreage of the Cowichan Reserve based on the nineteenth century surveys. This had been pointed out in the mid-1950s when the Indian Affairs Branch requested that the Surveyor General compile a reference plan [or map] of Cowichan Indian Reserve No. 1. In a letter from Surveyor General Thistlethwaite to W.C. Bethune, dated 8 February 1956, a summary of the surveys of this reserve between 1859 and 1874 was given. Thistlethwaite noted in his letter:<sup>102</sup>

The above surveys were carried out with a magnetic compass and the bearings shown differ by more than what is considered to be a reasonable amount of error, even for compass surveys.

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<sup>101</sup> Copy on file at PARC, RG10, File 974/30-3-1, Volume 2.

<sup>102</sup> Copy on file at PARC, RG10, File 974/30-3-1, Volume 2.

On 14 June 1956, Bethune wrote W.S. Arneil, Indian Commissioner for British Columbia:<sup>103</sup>

What do you think about new work being undertaken in the Cowichan Agency [?]. In this connection an attempt was made by the Surveyor General to compile a reference plan of Cowichan Indian Reserve No. 1 and it was found that, due to discrepancies between various old surveys, he could not compile the plan and recommended that in view of the overall picture a complete re-survey be made ...

Meanwhile, further up river at Skutz Falls, the question of ownership of the bed of the Cowichan River as it passes through Skutz Indian Reserve No. 8 was brought up in 1955 when a new fishway was proposed for this site. As early as 1921, the Department of Fisheries had undertaken improvement work at the Falls to assist the upstream migration of salmon and in 1931 had constructed a weir-type fishway.<sup>104</sup> In 1955 a new fishway was being proposed for the site. This new project would see built on the site a vertical slot fishway eight feet wide, with eighteen pools, each ten feet in length and about eight feet deep.

On 17 May 1955, G.R. Clark, the Deputy Minister of Fisheries, wrote Laval Fortier, his counterpart at the Indian Affairs Branch, Department of Citizenship and Immigration, requesting permission for access across Skutz Indian Reserve No. 8 to build the fishway in the Cowichan River "below the high water line."<sup>105</sup> That same day, Clark wrote C.W. McBain, the Land Agent for the Esquimalt and Nanaimo Railway Company, pointing out that:

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<sup>103</sup> Copy on file at PARC, RG10, File 901/30-1.

<sup>104</sup> See "Report on the Obstruction at Skutz Falls," by C.H. Clay, 22 September 1954. Copy on file at the National Archives of Canada, RG23, Volume 685, File 713-2-39(3).

<sup>105</sup> Copy on file at the National Archives of Canada, RG23, Volume 685, File 713-2-39(3).



Once again we note that the Skutz Falls site is within the Esquimalt and Nanaimo Railway belt and we would request permission on behalf of the Department to proceed with the proposed construction at the Falls. A preliminary location map and site plan is attached for your information and we would draw your attention to the fact that the two fishways are to be constructed below the high water line of the river.

When the Indian Affairs Branch replied, they made no mention of ownership of the bed of the river, only suggesting that the Department of Fisheries first acquire permission from the Cowichan Indians to build access roads across Skutz Indian Reserve No. 8. Permission was granted by the Indians in July 1955.

When the Land Agent for the Esquimalt and Nanaimo Railway replied, he pointed out that:

We do not own any of the uplands in that vicinity which are in the Indian Reserve and we are not too sure we own the bed of the river, but in any event, we are very glad to consent to the fishway being constructed.

The Land Agent also enclosed a letter from the railway company's Accounting Agent, M.H. Barry, which dealt with the bed of the Cowichan River. This letter reads:

We do not own any land at all on Cowichan River anywhere in the vicinity of Skutz Falls. However, I cannot tell you definitely whether we own the bed of the river at Skutz Falls or not.

Skutz Falls are within the boundaries of the Skutz Indian Reserve No. 8, which was never part of the Land Grant.

Mr. Goldfinch, in the Land Registry Office, showed me a plan dated 1880 representing surveys made in 1874 and 1878 of several Indian Reserves in the Duncan area [TBC 240], which plan would seem to indicate that the bed of the river was included in the Skutz Falls Indian Reserve No. 8. That is, the plan shows the reserve to be a square, 20 chs. by 20 chs., "40 Ac." printed in the square, with no acreage deducted for the river,

although, curiously, the river is colored blue while the uplands are colored red, which may or may not have any significance.

Anyway, I think you will agree, it would be quite in order to assume that we have no interest in this particular area, and, if the Sub-Committee approves, tell the Fisheries Department we have no objection, without investigating any further the ownership of the bed of the river.

The fishways were built in the 1950s. According to the Reserve General Register in the Indian Land Registry, DIAND, no land in the Skutz Indian Reserve No. 8 was ever surrendered for the fishways by the Band or the Indian Affairs Branch.

The problem of land erosion along the banks of the Cowichan and Koksilah Rivers continued to concern the Indian Affairs Branch throughout the 1950s.<sup>106</sup> In December 1956, the Branch requested the Prairie Farm Rehabilitation Administration, a division of the Department of Agriculture, to report on the problem and suggest recommendations for improvement. Their report, prepared by Murray A. Thompson, was released in June 1958.<sup>107</sup>

Among their recommendations for the Cowichan River, the P.F.R.A. suggested that several meanders in the river as it passed through Cowichan Indian Reserve No. 1 be straightened. These included upstream of the E. and N. Railway bridge, above the confluence of Somenos Creek with the Cowichan, and above Pimbury bridge. The report continued:

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<sup>106</sup> See correspondence on file at the National Archives of Canada, RG10, Volume 10327, File 974/8-4-3-1. Microfilm T-7594.

<sup>107</sup> Copy on file at the Prairie Farm Rehabilitation Administration, Regina.

In addition to these cutoffs outlined above, it is proposed to remove any sand bars or other hindrances [sic] to flow in the channel and to clear the channel banks of timber and brush to a minimum channel width of some 275 feet, from the Island Highway Bridge down, to give an unhindered flow to Cowichan Bay during high water. The banks of the Cowichan River will also be protected with rock riprap wherever it is expected serious erosion may occur.

For the Koksilah River, the P.F.R.A. proposed to construct a new channel that would follow the south side of the McMillan Bloedel road to Cowichan Bay.

This channel would be some 3300 feet long and would require one new bridge on the Tzuhalem Road. It is believed that the construction of this channel alone would eliminate most flooding conditions that have occurred in recent years on the lower Koksilah flats.

By 1967, however, little work had been done to improve either rivers. In a letter to his Minister, dated 23 June 1967, R.F. Battle, Assistant Deputy Minister (Indian Affairs), wrote:108

A committee was formed of interested parties including the Provincial Department of Highways and the Water Rights Branch ... The Committee was active for several years but no major works were ever undertaken principally due to the lack of interest by the Provincial Government.

### CONCLUSION

Based on historical documentation found to date, the Cowichan River was navigated by small craft, although portages were sometimes necessary around Skutz Falls and Marie Canyon. However, it was and is possible to run both the Falls and the Canyon in a canoe at certain times of the year. In R.I. Dougan's

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108 Copy on file at PARC, RG10, File 974/8-4-3-1 Volume 3.

Cowichan My Valley, a photograph is reproduced showing an Indian canoe "[r]unning the rapids at the rapids at the head of the canyon of Cowichan River."<sup>109</sup>

As well, from 1878 to 1908, the Cowichan River was used to transport sawed logs from Cowichan Lake to Cowichan Bay. After years of complaints from both Indians and white settlers that this practice was destroying the banks of the lower reaches of the river, especially near the Indian village of Quamichan, this method of transporting logs was stopped.

Little historic documentation was found during this present search to indicate whether the Koksilah River was navigated. However, in a memorandum dated 3 September 1987 from Fishery Officer Trevor Fields to Obert Sweitzer, Native Fisheries Advisor, Department of Fisheries and Oceans, it was pointed out that:<sup>110</sup>

The Koksilah River is accessible from Cowichan Bay and navigable by jet boat to the bottom of the canyon [Marble Falls], which is approximately seven miles from tide water. It is only a little over two miles [from the mouth of the Koksilah River] before you are through the reserve. During the summer months, a canoe only can be used because of severe low flows. Log jams occasionally block the channel but are temporary in nature.

Fields also points out the "[c]anoe races, as well as recreational canoeing, is popular on the whole length of the Cowichan River and in the lower portion of the Koksilah ... Those areas that most of us would feel were not navigable because

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<sup>109</sup> R.I. Dougan, Cowichan My Valley, page 62.

<sup>110</sup> Copy on file at the Department of Fisheries and Oceans, Ottawa.

of turbulence, are becoming more and more popular to kayak clubs. Marie Canyon is particularly popular."

The Cowichan Indian Reserve No. 1, which is on both the Cowichan and Koksilah Rivers, was laid out prior to Confederation. The Indians maintain that the limits of the reserve was first pointed out to them by colonial Governor Sir James Douglas in 1856. In 1859, Surveyor Oliver Wells delineated the land districts around the mouth of the Cowicahh River, which included the Indian reserve. However, his survey was later proved to be inaccurate. In 1867, the reserve was surveyed again and cut down in size. It was surveyed in part again in 1869 and again in 1874.

On 17 February 1877, the Indian Reserve Commission passed a Minute of Decision confirming Cowichan Indian Reserve No. 1, as well as Theik Indian Reserve No. 2 and Kilpahlas Indian Reserve No. 3. The Commission also confirmed five fishing stations on Cowichan River, each to contain less than twenty acres. However, when these reserves were laid out, only four were established. One, Skutz Indian Reserve No. 8, contained forty acres. The others were: Tzartlamr Indian Reserve No. 5, Kakalatza Indian Reserve No. 6, and Skutz Indian Reserve No. 7. On 31 May 1887, Indian Reserve Commissioner Peter O'Reilly passed a Minute of Decision creating Cowichan Lake Indian Reserve. This latter reserve does not belong to the Cowichan Indians. On 6 April 1906, Indian Reserve Commissioner A.W. Vowell allotted Cowichan Indian Reserve No. 9 to the Cowichan Indians.

In 1913, the Royal Commission on Indian Affairs for the Province of British Columbia was established. On 23 July 1913, the nine reserves allotted to the Cowichan Indians were confirmed by a Minute of Decision, with an amendment to the Minute made on 19 February 1916. On 28 July 1913, a Minute of Decision was passed allotting Cowichan Lake Indian Reserve to the Cowichan Lake Tribe.

On 29 July 1938, Provincial Order in Council 1036 was passed conveying the Indian Reserves outside the Railway Belt and the Peace River Block from provincial to the federal government. The nine Cowichan reserves and Cowichan Lake Reserve were transferred at this time.

Throughout, the history of Cowichan Indian Reserve No. 1, minor flooding of both the Cowichan and Koksilah Rivers was an annual event. The soft alluvial soil along the banks of the lower reaches of the rivers were often washed away. Soil loss was especially a problem during the period 1878 to 1908 when sawed logs were flushed down the river during flood periods, slamming into the banks or causing jams.

Finally, it must be pointed out that several of the Cowichan Indian reserves front on tidal water. Theik Indian Reserve No. 2 and Kilpahlas Indian Reserve No. 3 both front on Cowichan Bay. According to a report prepared in December 1959 by the Cowichan Lake Committee, a group formed by the British Columbia Department of Land and Forests and comprising provincial and federal government officials, industrial representatives and local municipal politicians, the tidal influence on the Cowichan River can almost be felt as high as Somenos Creek.<sup>111</sup> This would mean that the tidal influence is felt at Cowichan Indian Reserve No. 9, located near the confluence of the Cowichan and Koksilah Rivers, and through a substantial portion of Cowichan Indian Reserve No. 1.

July 1988

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<sup>111</sup> See "Preliminary Report Respecting Flooding and Erosion on the Cowichan River. Vol. 1." Copy on file at the National Archives of Canada RG23, Volume 554, File 41-1.

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